Supreme Court, U. S.
FILED
MAY 31 1977
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-709

EARL L. BUTZ, ET AL., PETITIONERS

v.

ARTHUR N. ECONOMOU, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FILED NOVEMBER 19, 1976
CERTIORARI GRANTED FEBRUARY 22, 1977

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-709

EARL L. BUTZ, ET AL., PETITIONERS

v.

ARTHUR N. ECONOMOU, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX TO APPENDIX

	Page
District Court Docket Entries	2
Court of Appeals Docket Entries	6
Verified Complaint—February 2, 1972	8
Affidavit of Arthur N. Economou—February 3, 1972	15
Affidavit of T. Reed McMinn—February 14, 1972	141
Affidavit of Richard W. Davis, Jr.—February 14, 1972	142
USDA Cover Sheet in CEA Docket 167	150
Plaintiffs' Interrogatories—March 20, 1975	151
Verified (Second) Amended Complaint—March 31, 1975	156
Motion to Dismiss Second Amended Complaint—March 21, 1975	163
Order amending Caption—November 22, 1976	165
Order granting Petition for a Writ of Certiorari—February 22, 1977	166
The memorandum of the district court, dated May 22, 1975, the court of appeals' opinion and judgment, dated April 23, 1976, and the orders of the court of appeals, denying rehearing and rehearing *en banc*, dated July 23, 1976, are contained in the appendices to the petition for a writ of certiorari (Pet. App. A-D). The opinion of the court of appeals in *Economou* v. *Department of Agriculture* (petition for review of the administrative order), dated March 28, 1974 [494 F.2d 519] appears in Appendix B to the brief in opposition.	

RELEVANT DOCKET ENTRIES

CIVIL DOCKET

UNITED STATES DISTRICT COURT

TITLE OF CASE

Arthur N. Economou, Arthur Economou & Co., Inc. The American Board of Trade, Inc.

Plaintiff,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; EARL L. BUTZ, Secretary of Agriculture; RICHARD T. LYNG, Assistant Secretary of Agriculture; Commodity Exchange Authority; ALEX C. CALDWELL, Act Administrator, Commodity Exchange Authority; CHARLES E. ROBINSON, Director, Compliance Division, Commodity Exchange Authority; RICHARD E. KIRCHHOFF, Deputy Director, Registration and Audit Division, Commodity Exchange Authority; JACK W. BAIN, Chief Hearing Examiner, United States Department of Agriculture; RICHARD W. DAVIS, JR., Counsel, United States Department of Agriculture; T. REED MCMINN, Regional Administrator, New York Regional Office, Commodity Exchange Authority; CLEMENT GROSS, Auditor, Commodity Exchange Authority; MURRAY A. WOLKIS, Auditor, Commodity Exchange Authority; EDWARD F. FITZPATRICK, Auditor, Commodity Exchange Authority

Defendants

DONALD A. CAMPBELL, Judicial Official, U.S. Dep't of Agriculture. Deft-Appellee

DATE	PROCEEDINGS
2/2/72	FILED COMPLAINT.
2/3/72	Filed Order to Show Cause. Re: Preliminary Injunction ret. 2/15/72.
4/4/72	Filed ANSWER of defendants, to complaint.
4/20/72	Filed Memorandum & Order Accordingly pltff's motion is denied in all respects. MacMahon, J. (mailed notice).
5/3/72	Filed Notice of Appeal (mailed notice).
5/3/72	Filed Pltff. Notice of Motion. Re: Stay Proceedings. ret. 5/16/72.
5/16/72	Filed Memo. End. on motion paper dated 5/3/72. Referred to Judge MacMahon, Frankel J.
5/22/72	Filed 2nd Memo on motion paper dated 5/3/72. pltffs. motion for an injunction pending appeal of our order denying preliminary injunctive relief in this matter is denied. MacMahon, J.
12/11/72	Filed pltffs. Notice of Motion for a hearing on Dec. 15th, 1972 for leave to file an amended complaint.
12/18/72	Filed memo endorsed on motion filed Dec. 15th, 1972. MOTION GRANTED DEFT given 60 days to answer complaint. MacMahon, J.
12/29/72	Filed pltffs Affidavit & Notice of Motion for a preliminary injunction enjoining the defts et al. from any further proceedings or actions in proceeding under C.E.A. Docket No. 167 as indicated.
1/5/73	Filed MEMO. END. on notice of motion filed 12/29/72. We deny plaintiff's motions for a temporary restraining order and a preliminary injunction. So ordered. MacMahon, J.
1/12/73	Filed Notice of Appeal by Arthur W. Economou (mailed copy).
2/28/73	Filed ANSWER of defendants to Amended Complaint.
1/22/74	Filed true copy of USCA order dismissing the appeal.
3/7/75	Filed pltffs notice of motion to amend the complt. Ret. 3/21/75.
3/20/75	Filed pltffs request to defts to answer interrogs.

DATE	PROCEEDINGS
3/21/75	Filed defts notice of motion to dismiss the second amended complt. Ret. 4/4/75.
3/21/75	Filed defts memo of law in support of motion.
3/25/75	Filed Memo-End. on motion of 3/7/75. The within motion is granted on consent. So Ordered, MacMahon, J. m/n
3/31/75	Filed pltffs verified amended complt.
4/2/75	Filed pltffs reply brief.
5/14/75	Filed pltffs affdvt & notice of motion to compel disclosure. Ret. 5/23/75.
5/22/75	Filed Memorandum & Order #42465. Since the individual defts have shown that their alleged unconstitutional acts were both within the scope of their authority & discretionary, we dismiss the second amended complt as to them. Defts motion pursuant to Rule 12(b) to dismiss the second amended complt as to all defts is granted. MacMahon, J. m/n Judg'mt Ent. 5/27/75, C.
5/27/75	Filed decision & order of the Judicial Officer of U.S. Dep't of Agriculture.
3/25/75	Filed Memo-End. on motion of 3/7/75. The within motion is granted on consent. MacMahon, J.
5/23/75	Filed Memo-End. on motion of 5/14/75. The within motion by pltffs to compel defts to answer interrogs of 3/19/75 is dismissed as moot. See Memo-Dec. of this date granting defts motion to dismiss the second amended complt as to all defts. So Ordered, MacMahon, J. m/n
5/28/75	Filed Notice of Entry of Order & Memorandum #42465 by deft USA.
6/16/75	Filed pltffs notice of appeal to the USCA from the Order of Judge MacMahon, dated & entered 5/22/75, granting defts motion to dismiss the second amended complt of the pltffs as to all defts. Copy sent to: Paul J. Curran, U.S. Attorney, Att: Mel P. Barkan, Ass't U.S. Attorney, One St. Andrews Plaza, New York, N.Y. 10007.
7/7/75	Filed notice that original record on appeal has been Certified & transmitted to the USCA.

DATE	PROCEEDINGS
8/3/76	Filed Mandate & Opinion from the USCA that the order of the USDC is affirmed in part & reversed in part & that the action is remanded to the District Court for further proceedings. Clerk. Judgment Ent., 8/4/76, Clerk. n/m
9/2/76	Filed Memo-End. on unsigned Order on Mandate. The within proposed order not signed as premature, without prejudice to resubmission upon any of the following conditions: (1) expiration of the Govt's time to apply for certiorari to the Supreme Court on 10/21/76; (2) the denial of certiorari by the Supreme Court, or (3) final determination of an appeal to the Supreme Court. n/m
9/7/76	Rec'd letter of change of address for David Buxbaum, 11 B'Way Suite 1612, New York, N.Y. 10004, tel. #425-4347.
11/26/76	Filed True Copy that caption in the within action & in the opinion of this court of 4/23/76, is amended to include the name of deft-appellee Donald A. Campbell, Judicial Officer, U.S. Dep't of Agriculture. Clerk. n/m
1/27/77	Filed pltffs demand for jury trial.

SOUTHERN DISTRICT

Case No.
75-6050

TITLE OF CASE

ARTHUR N. ECONOMOU,

Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; EARL L. BUTZ, Secretary of Agriculture; RICHARD T. LYNG, Assistant Secretary of Agriculture; Commodity Exchange Authority; ALEX C. CALDWELL, Act Administrator, Commodity Exchange Authority; CHARLES E. ROBINSON, Director, Compliance Division, Commodity Exchange Authority; RICHARD E. KIRCHHOFF, Deputy Director, Registration and Audit Division, Commodity Exchange Authority; JACK W. BAIN, Chief Hearing Examiner, United States Department of Agriculture; RICHARD W. DAVIS, JR., Counsel, United States Department of Agriculture; T. REED MCMINN, Regional Administrator, New York Regional Office, Commodity Exchange Authority; CLEMENT GROSS, Auditor, Commodity Exchange Authority; MURRAY A. WOLKIS, Auditor, Commodity Exchange Authority; EDWARD F. FITZPATRICK, Auditor, Commodity Exchange Authority, DONALD A. CAMPBELL, Judicial Official

Defendants-Appellees.

GENERAL DOCKET

United States Court of Appeals for the Second Circuit

DATE	FILINGS—PROCEEDINGS
6/18/75	Filed copy of docket entries and notice of appeal (Economou)
6/25/75	Received docket fee
6/25/75	David C. Buxbaum, Esq. filed form C with proof of service
6/25/75	David C. Buxbaum, Esq. filed form D w/pfs
6/26/75	Filed notice excluding ACTION from C.A.M.P.
7/7/75	Filed record (Original papers of district court)
8/26/75	Filed stipulation: deferred appendix
8/26/75	Filed briefs, appellant, with pfs
9/5/75	Filed briefs, appellee, with pfs (4 page proofs)
9/30/75	Filed printed briefs, appellee, w/pfs
10/9/75	Filed reply brief, appellant, with proof of service
12/18/75	Filed motion for leave to dispense with appendix, pfs
12/22/75	Filed order granting leave to dispense with appendix
2/26/76	Argument heard (By: Mansfield, Timbers, Meskill, C.J.J.)
4/23/76	Judgment affirmed in part, reversed and remanded in part, Mansfield, C.J.J.
4/23/76	Filed judgment
5/4/76	Filed motion for leave to extend time to file petition for rehearing and rehearing en banc, appellee, pfs
5/7/76	Filed order granting leave to extend time to file petition for rehearing and rehearing en banc to 6/7/76
6/2/76	Filed motion for leave to extend time to file petition for rehearing and rehearing en banc to 6/21/76, appellee, pfs
6/4/76	Filed order granting leave to extend time to file petition for rehearing and rehearing en banc to 6/21/76

DATE	FILINGS—PROCEEDINGS
6/21/76	Filed motion for leave to file oversized petition for rehearing, w/pfs, appellees
6/23/76	Filed order granting leave to file petition for rehearing and rehearing en banc not to exceed 15 printed pages
6/23/76	Filed petition for rehearing and rehearing en banc
7/23/76	Filed order denying petition for rehearing
7/23/76	Filed order denying petition for rehearing en banc
7/30/76	Issued mandate (opinion and judgment)
8/4/76	Original record returned to district court
8/9/76	Filed receipt of return of original record
11/22/76	Filed order that caption in the within action and in the opinion of this court of 4/23/76 be amended to include the name of defendant-appellee, "Donald Campbell"
11/26/76	Filed notice of filing of petition for writ of certiorari (SC #76-709)
2/3/77	Issued certified copy of order amending caption of case
3/2/77	Filed certified copy of order of Supreme Court granting petition for writ of certiorari

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No Summons Issued

Civil Action No.
72-478

ARTHUR N. ECONOMOU,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; EARL L. BUTZ, Secretary of Agriculture; RICHARD T. LYNG, Assistant Secretary of Agriculture; Commodity Exchange Authority; ALEX C. CALDWELL, Act Administrator, Commodity Exchange Authority; CHARLES E. ROBINSON, Director, Compliance Division, Commodity Exchange Authority; RICHARD E. KIRCHHOFF, Deputy Director, Registration and Audit Division, Commodity Exchange Authority; JACK W. BAIN, Chief Hearing Examiner, United States Department of Agriculture; RICHARD W. DAVIS, JR., Counsel, United States Department of Agriculture; T. REED MCMINN, Regional Administrator, New York Regional Office, Commodity Exchange Authority; CLEMENT GROSS, Auditor, Commodity Exchange Authority; MURRAY A. WOLKIS, Auditor, Commodity Exchange Authority; EDWARD F. FITZPATRICK, Auditor, Commodity Exchange Authority

Defendants.

VERIFIED
COMPLAINT

1) This proceeding is brought under Section 8a (6) of the Act of May 12, 1933 (48 Stat. 31), 7 USC, Section 608a (6), as amended May 9, 1934 (48 Stat. 672), as further

amended August 24, 1935 (49 Stat. 750), and as reenacted and amended in the Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (50 Stat. 246) (the said act of May 12, 1933, as reenacted and amended being hereinafter referred to as the "Act"), vesting the several courts of the United States with jurisdiction specifically to enforce and prevent and restrain any person from violating any regulation issued pursuant to the provisions of Title 1 of the Act, as well as pursuant to Sections 2201, 2202 of Title 28 of the United States Code; Sections 1361 and 2282 of the United States Code; and Section 10(b) of the Administrative Procedure Act (5 USC Section 703).

2) This is an action in equity of a civil nature brought to most urgently request the Court to intervene and assume jurisdiction at this time in the proceeding under CEA Docket No. 167 of the U. S. Department of Agriculture and its administrative agency, the Commodity Exchange Authority, to forestall and avert the substantial and irreparable damage which is impending, and also to request protection, redress and other relief from the Court against the illegal, unconstitutional, conspiratorial and criminal acts of certain of the Commodity Exchange Authority officers and employees against the plaintiff over approximately the past two and a half years. This conspiracy has reached a critical juncture, and the intervention of the Court is the plaintiff's only possible protection at this time.

3) More specifically, the plaintiff is asking the Court: a) to enjoin the defendants, initially by way of a temporary injunction and finally by a permanent injunction, from continuation in any form of the proceeding under CEA Docket No. 167; b) for declaratory judgment declaring unconstitutional certain of the rules promulgated and administrative procedures employed by the Commodity Exchange Authority; c) for declaratory judgment defining the term "willfull" as used in the Commodity Exchange Act and the rules promulgated thereunder; d) for declaratory judgment declaring illegal, improper and malicious certain documents filed by the Commodity Exchange Authority, which documents are part of the record of CEA Docket No. 167; e) for declaratory judgment declaring null and void the hearing held in connection with CEA Docket No. 167; f) for substantial redress for the severe damages and suffering inflicted upon the plaintiff by the U. S. Department of Agri-

culture and the Commodity Exchange Authority through the improper, malicious and conspiratorial acts of their officials and personnel; and g) for such other relief as the Court may deem just and proper.

4) The proceeding under CEA Docket No. 167, which is completely devoid of legal, factual or moral basis but which serves to form the nominalistic regulatory procedural framework which the defendants have used to commit illegal, unconstitutional and criminal acts against the plaintiff alleges that one of the plaintiff's companies, Arthur N. Economou & Co., Inc., and the plaintiff, as registered commission merchants, failed to meet minimum financial requirements under the Commodity Exchange Act (7 USC 6f, Supp. IV, 1969) and that we willfully violated section 4f of said Act and Section 1.17 of the rules promulgated thereunder (34 F.R. 599).

5) Plaintiff Arthur N. Economou is, and has been, an active member of the commodities markets since 1955. He is president and controlling stockholder of Arthur N. Economou & Co., Inc., a co-defendant in the aforesaid CEA proceeding, Docket No. 167; is the general and managing partner of the Economou Precious Metals Futures Trading Syndicate and The Economou Grain Futures Trading Syndicate, president and controlling stockholder of The Journal of Investment Finance, Inc., founder and president of The American Association of Commodity Traders; and president of The American Board of Trade, Inc., The American Board of Trade Service Corp., and The American Board of Trade Clearing Corp., as well as president and controlling stockholder of the Economou Financial and Development Corp.

6) The defendants are all agents or employees of the United States Department of Agriculture.

7) From 1955 to 1969, while constantly engaged in the commodities field, the plaintiff enjoyed entirely pacific relations with the Commodity Exchange Authority, and all other branches of the U. S. government. During this period the plaintiff was never a party to any law suit or proceedings. In 1969 the plaintiff caused to be brought to the attention of the CEA plans for the creation of a new commodities exchange and marketplace, The American Board of Trade, Inc., embodying operational concepts which would streamline and improve the operations of commodity trading and

provide for more orderly markets. One of the effects of The American Board of Trade, Inc., if successful, would be to make obsolete various functions of the CEA, and also make obsolete much of the CEA's personnel and practices. As a result, the defendants did immediately embark upon a criminal conspiracy to attack the plaintiff, and to destroy his reputation in the business community, thus undermining The American Board of Trade, Inc., with which the plaintiff's name and integrity are inextricably interwoven.

In pursuance of the conspiracy, among other things, the defendants falsified the financial books and records of the plaintiff's affiliated organization and published and caused to be published information they knew to be false and misleading with respect to the financial stability of plaintiff and an affiliated organization; and they have caused to be brought against plaintiff and an affiliated organization, a CEA proceeding, denominated Docket No. 167, knowing that the basis of such proceeding was untrue and that plaintiff was innocent of the charges therein set forth; and the defendants did cause the use and operations of numerous procedural stratagems, devices and other things to thwart and prevent the plaintiff from offering any effective defense in said proceeding (Docket No. 167), including the shocking promulgation of a sham referee's report which was merely a photo-copy of an interim CEA prosecution pleading, again with the purpose of defaming plaintiff's business reputation, so as to destroy the American Board of Trade, although in so doing it was necessary to deprive plaintiff of his Constitutional rights, and destroy and subvert the usual administrative procedures.

8) The actions of the defendants in furtherance of this conspiracy have and will continue to cause plaintiff substantial and irreparable loss and damage, for which there is no adequate remedy at law.

WHEREFORE plaintiff demands:

1) That the Court issue a preliminary injunction during the pendency of this action preventing and restraining the defendants, their agents, officers, attorneys, employees and successors in office and all persons acting in concert with same, and any successors in office against any further proceedings with respect to the aforesaid CEA Docket No. 167.

2) That the Court issue a permanent injunction preventing and restraining the defendants, their agents, officers,

attorneys, employees and successors in office, and all persons acting in concert with same and any successors in office against any further proceedings with respect to the aforesaid CEA Docket No. 167.

3) That plaintiff have judgment and decree of this Court declaring plaintiff's rights and status, and more particularly adjudicating

(a) That Section 1.17 of the regulations promulgated by the Secretary of Agriculture under the Commodity Exchange Act effective March 17, 1969 (34 FR599) and Section 4f of the Commodity Exchange Act (7 USC 6f, Supp. IV, 1969) violates plaintiff's Federal Constitutional rights in that by being so vague as to not inform plaintiff of what is either prohibited or required they fail to provide the "due process" required by the United States Constitution.

(b) That the term "willfully" as used in Section 6(b) of the Commodity Exchange Act, and in Section 0.3(c) of the rules thereunder, (7 USC 6f, Supp. IV, 1969) requires either a deliberate intent to violate the said regulation or a reckless disregard thereof.

(c) That the Court declare the purported referee's report of August 17, 1971, and the hearing of August 5, 1970, to August 10, 1970, a sham, and null and void.

4) That judgment be granted in the amount of $32,000,000.00. That as a result of the actions of the defendants, their agents, officers, attorneys and employees, the plaintiff suffered and will continue to suffer damages in the sum of thirty two million dollars ($32,000,000.00).

5) That this court grant plaintiff such other and further relief as may be just and proper.

Plaintiff, pro se
286 Fifth Ave., Suite 506
New York, N.Y. 10001
(212) 736-4610

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No.
00-000

ARTHUR N. ECONOMOU,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; EARL L. BUTZ, Secretary of Agriculture; RICHARD T. LYNG, Assistant Secretary of Agriculture; Commodity Exchange Authority; ALEX C. CALDWELL, Act Administrator, Commodity Exchange Authority; CHARLES E. ROBINSON, Director, Compliance Division, Commodity Exchange Authority; RICHARD E. KIRCHHOFF, Deputy Director, Registration and Audit Division, Commodity Exchange Authority; JACK W. BAIN, Chief Hearing Examiner, United States Department of Agriculture; RICHARD W. DAVIS, JR., Counsel, United States Department of Agriculture; T. REED MCMINN, Regional Administrator, New York Regional Office, Commodity Exchange Authority; CLEMENT GROSS, Auditor, Commodity Exchange Authority; MURRAY A. WOLKIS, Auditor, Commodity Exchange Authority; EDWARD F. FITZPATRICK, Auditor, Commodity Exchange Authority

Defendants.

INDIVIDUAL VERIFICATION

Arthur N. Economou, being duly sworn, deposes and says that he is the plaintiff in the action herewith; that deponent has read the foregoing complaint and knows the contents thereof; that the same is true to deponent's own knowledge,

except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

/s/ Arthur N. Economou

Sworn to before me, this
21st day of January, 1972
/s/ Sidney Ganz
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No.
00-000

ARTHUR N. ECONOMOU,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; EARL L. BUTZ, Secretary of Agriculture; RICHARD T. LYNG, Assistant Secretary of Agriculture; Commodity Exchange Authority; ALEX C. CALDWELL, Act Administrator, Commodity Exchange Authority; CHARLES E. ROBINSON, Director, Compliance Division, Commodity Exchange Authority; RICHARD E. KIRCHHOFF, Deputy Director, Registration and Audit Division, Commodity Exchange Authority; JACK W. BAIN, Chief Hearing Examiner, United States Department of Agriculture; RICHARD W. DAVIS, JR., Counsel, United States Department of Agriculture; T. REED MCMINN, Regional Administrator, New York Regional Office, Commodity Exchange Authority; CLEMENT GROSS, Auditor, Commodity Exchange Authority; MURRAY A. WOLKIS, Auditor, Commodity Exchange Authority; EDWARD F. FITZPATRICK, Auditor, Commodity Exchange Authority

Defendants.

AFFIDAVIT

I, Arthur N. Economou, being duly sworn, depose and say that I am a citizen of the United States, a resident of the State of New York, the plaintiff in this action and that I make this affidavit in support of my application, as plaintiff, for an order of temporary injunction against the defendants. I further depose and say:

"A"

Business Affiliations

I have been active in the commodity and financial fields since April, 1955. The following is a summary of the various closely related enterprises and activities in which I am engaged.

1) I am president and controlling stockholder of Arthur N. Economou, Co., Inc., an enterprise established in 1955 to act as commodity broker, price analyst and trading and investing account manager in the field of commodities. From approximately 1960 through December 3, 1970, the organization was registered as commission merchants with the Commodity Exchange Authority under the Commodity Exchange Act. From 1956 through 1964, I was a member of the Chicago Mercantile Exchange and acted as broker for eggs, potatoes, pork bellies and other commodities traded on that exchange.

2) I am also founder and president of The American Association of Commodity Traders, with about 1,200 members, chartered in 1965 as a non-profit educational organization. I am also editor of the official publication of the Association, the "Commodity Journal," published bi-monthly since 1965.

3) I am also general and managing partner of The Economou Precious Metals Futures Trading Syndicate, a limited partnership, units in which, in the total amount of $2,500,000, have been registered with the Securities and Exchange Commission under the Securities Act of 1933, with said registration having become effective as of March 20, 1969.

4) I am also general and managing partner of The Economou Grain Futures Trading Syndicate, a limited partnership, units in which, in the total amount of $2,500,000, were registered for sale to the public in late 1969 with the Securities and Exchange Commission under the Securities Act of 1933, but said registration was abandoned in 1971 for pertinent reasons detailed under Section "I" of this affidavit.

5) I am also president and, together with an affiliated organization, controlling stockholder of The Journal of Investment Finance, Inc., a publishing enterprise in the commodities and financial fields established mid-1970. I am

editor of two bi-weekly newsletters published by this organization—the "Silver Market Letter" and the "Foreign Exchange Letter."

6) I am also founder and president of The American Board of Trade, Inc., a new financial and commodity exchange and marketplace complex, which commenced operations in November, 1969. Since November, 1969, The American Board of Trade has provided a futures and cash market for traders and investors in silver bullion, silver coins and in seven foreign exchange markets—specifically, the Canadian dollar, British pound sterling, French franc, West German mark, Swiss franc, Italian lira and Japanese yen. In addition, the new exchange has acted as agent to its clients for the purchase of U.S. Treasury Bills of three-month and six-month maturities.

7) I am also president and, together with an affiliated organization, controlling stockholder of The American Board of Trade Service Corp., the operational arm of The American Board of Trade exchange complex, which provides the physical facilities and communications systems for execution of orders and for the sales of franchises and the design and leasing of equipment and offices for the exchange and its franchised members, and acts as specialists in providing an orderly and fluid market for the commodities traded on the ABT.

8) I am also president and, together with an affiliated organization, controlling stockholder of The American Board of Trade Corp., the accounting and bookkeeping "arm" of the new exchange complex, which provides a completely centralized accounting system for exchange transactions and maintains the accounts and records for the customers of individual exchange members, and for exchange members themselves.

9) I am also president and controlling stockholder of The Economou Financial and Development Corp., which supplies management services for The American Board of Trade, Inc., The American Board of Trade Service Corp. and The Journal of Investment Finance. The Economou Financial & Development Corp. is the affiliated organization with which I am controlling stockholder of The Journal of Investment Finance, Inc., The American Board of Trade Service Corp. and The American Board of Trade Clearing Corp., as mentioned under 5), 7) and 8) above. The Economou Financial

& Development Corp. filed a common stock issue for sale to the public in the amount of $300,000 with the Securities and Exchange Commission New York regional office under Regulation "A" of the Securities Act of 1933, and said filing was made effective by the Securities and Exchange Commission on May 26, 1970. The stock issue in the amount of $300,000, less sales expenses of approximately $30,000, was intended to provide "seed money" for the sole purpose of launching the initial stages of the new ABT exchange and marketplace complex.

• • •

"B"

Abbreviations Used in This Affidavit

"ANE & Co."—denotes Arthur N. Economou & Co., Inc.

"AACT"—denotes The American Association of Commodity Traders

"Precious Metals Syndicate"—denotes The Economou Precious Metals Futures Trading Syndicate.

"Grain Futures Syndicate"—denotes The Economou Grain Futures Trading Syndicate.

"J of F, Inc."—denotes The Journal of Investment Finance, Inc.

"ABT"—denotes The American Board of Trade, Inc.

"ABT Service"—denotes The American Board of Trade Service Corp.

"ABT Clearing"—denotes The American Board of Trade Clearing Corp.

"EF&D"—denotes The Economou Financial & Development Corp.

"CEA"—denotes the Commodity Exchange Authority, which administers the Commodity Exchange Act.

• • •

"C"

Contents of this Affidavit

1) The essential facts with respect to the issues presented by me in this action are generally set forth in the complaint which I have verified, which is filed in this action, and in which I ask the Court to intervene in the proceeding under CEA Docket No. 167 and offer me protection against and redress for the unconstitutional, conspiratorial and criminal

acts of CEA officials and personnel against me during the past 33 months.

The purpose of this affidavit is four-fold: a) to set forth certain supplemental facts of interest to the Court; b) to present the background of events relative to CEA Docket No. 167 leading up to the present application for injunctive relief, so that the Court may have a full understanding of the legal and factual issues involved; c) to set forth, for consideration by the Court, the moral and ethical issues that are also interwoven in the fabric of my controversy and struggle with the CEA; and d) to point out to the Court specific areas in CEA procedural activities that involve issues and matters of law, rather than agency "expertise," that are in dire need of legal attention and repair such as only the Court can supply; and e) to urgently request and plead with the Court to offer me the injunctive relief sought herein, in order to avert the substantial and irreparable harm and injury which now impends.

2) For the convenience of the Court in analyzing the myriad issues of law and fact that I am presenting within the aforesaid purpose of this affidavit, I am listing below the title of each section of this affidavit which follows, together with a brief descriptive statement of the subject matter of each section.

Should repetitiveness become apparent in the listing that follows, and within the overall context of this affidavit, I should like to point out that the myriad issues contained in my controversy with the CEA are so inextricably interwoven, and even interlocked that, in the writing of this affidavit, I found it impossible to present the issues neatly packaged as individual items or themes. I ask the Court's forebearance, therefore, for any repetitiveness or duplication of subject matter or issues which may become apparent in this affidavit.

• • •

Section "D" is entitled "Record and Background of my Experience," and is devoted to an outline of my background in the commodity and financial communities from 1955 through to the present.

Section "D" starts on Page 26.

• • •

Section "E"—"General Issues Involved"—contains an

outline of the main areas that comprise the overall schematism of the present CEA/Economou situation, which forms the basis for the complaint filed in the instant action and for the protection and redress that I am asking of the Court. Section "E" offers an overview of the general issues involved, among which are:

. . . the CEA conspiracy, and the underlying motivation that generated the illegal acts of the CEA officials and personnel;

. . . the modus operandi of the conspiracy, the principal feature of which was to synthesize and mesh the rule-making, investigatory, prosecution and judicial functions of the CEA into a monolithic attack upon me, and to completely bury and ignore the many facts and issues which I presented in our defense, as well as to totally ignore my repeated charges of illegal and unconstitutional activity by CEA officials and personnel.

. . . the particularly heinous nature of the conspiracy, in that the assault was overtly carried out in a totally fabricated pattern, nominalistically labeled as an agency "doing its duty," yet the activity had no relation whatever to the functions of the defendants under the Commodity Exchange Act and represented shocking abuse and misuse of the power of a government agency.

. . . the need for the Court to judicially assay and remedy the loosely-structured rules of the CEA to prevent similar damaging assaults in the future upon innocent persons, whereby the CEA can abrogate the due process concept of our Constitution at will in pursuit of warped, illegal and evil objectives.

Section "E" starts on Page 28.

• • •

Section "E-1"—"Specific Issues Involved"—is devoted to a listing and brief description of the myriad issues of law and fact that are interwoven and intertwined in the framework of the CEA conspiracy, which have violated my Constitutional rights, deprived me of due process of law, caused great damage, and now threaten me with irreparable harm if the Court does not intervene at this time.

Section "E-1" starts on Page 32.

• • •

Section "F"—"The Development of my Business Philos-

ophy"—is devoted to a discussion of the business philosophy which evolved from 1955 through 1965 as I became aware of the archaic and outworn methods and procedures traditionally used in the commodity and financial exchange community, approved and condoned by regulatory bodies, but which are harmful to the investing public and to trade interests. These realizations resulted in my resignation from the Chicago Mercantile Exchange in 1964, the founding of The American Association of Commodity Traders in 1965, and the planning and organizing of The American Board of Trade, which was launched in 1969, and in my resignation as a registered commission merchant under the Commodity Exchange Act in December, 1970.

Section "F" starts on Page 34.

• • •

Section "G"—"The AACT"—is a write-up of the objectives of The American Association of Commodity Traders, and its programs for the dissemination of information and educational materials in its chosen field.

Section "G" starts on Page 42.

• • •

Section "H"—"The ABT Complex"—is devoted to a description of The American Board of Trade, the new exchange and marketplace, and its operational affiliates, The American Board of Trade Service Corp., The American Board of Trade Clearing Corp., The Journal of Investment Finance and The Economou Financial and Development Corp. The ABT Exchange complex has proposed and implemented unique and innovative operational and conceptual features, which pose a threat to the established commodity exchange community as now regulated by the CEA under its own special interpretation of the Commodity Exchange Act, as well as to the CEA itself in its present functional capacity.

Section "H" starts on Page 44.

• • •

Section "I"—"The Two Trading Syndicates"—is devoted to an overview of the conceptual aspects and operational features of The Economou Precious Metals Futures Trading Syndicate and The Economou Grain Futures Trading Syndicate, which I organized, structured into reality and registered with the Securities and Exchange Commission in 1968 and 1969, respectively. These two organizations were

an outgrowth of my experience as a commodity trading account manager, but have been rendered into stagnation by the effects of the CEA conspiracy against me.

Section "I" starts on Page 50.

• • •

Section "J"—"ANE & Co., Inc."—is devoted to an overview of Arthur N. Economou & Co., Inc., and contains an outline of this company's plans to act as broker for both the "Precious Metals Syndicate" and the "Grain Futures Syndicate" starting in 1969, after I had phased out of my activities under the jurisdiction of the CEA, and which now is unable to function normally, owing to the vitiating effects of the CEA conspiracy.

Section "J" starts on Page 55.

• • •

Section "K" is a detailed presentation of the "Sequence of Events and Acts" preceding and subsequent to the issuance of the complaint by the CEA in February, 1970, which signalled the initial overt step in the conspiracy against me, planned and implemented by CEA officials and personnel.

Section "K" starts on Page 57.

• • •

Section "L" is entitled "The Mock Hearing," and describes the 3½-day hearing that took place in August, 1970, in CEA Docket No. 167, in which the referee, who issued the "referee's report" detailed under Section "M", presided. The so-called "hearing' was an integral link in the CEA conspiracy to eliminate me and the ABT from the commodity and financial community and was accordingly conducted by the referee in a totally unfair and discriminatory manner in violation of the letter and spirit of the rules and regulations of the Commodity Exchange Act and the Administrative Procedures Act, and in violation of my Constitutional rights.

Section "L" starts on Page 94.

• • •

Section "M" is entitled "Maliciousness of the Referee's Report," and covers the extraordinary development in CEA Docket No. 167 whereby the referee, literally, photo-copied 20 pages of the CEA prosecution's brief against me and my company and presented the 20 pages as "his" findings

of fact, "his" conclusions and "his" recommendations, in the form of a so-called "Referee's Report," which traditionally and legally is a true "key" or "critical" report in an administrative proceeding. Only three pages of the referee's report, pages 1 through 3, devoted to a perfunctory and superficial "Preliminary Statement," represented "considered judicial" thinking of the referee. The remaining 20 pages, with minor alterations, were actual photocopies of the CEA prosecution attorney's brief. No mention was made in the so-called "referee's report" of our own intensive and extensive defense in the form of our Answer to the Complaint, our testimony at the hearing, and the relatively extensive briefs which we filed in CEA Docket No. 167—said briefs having been written and filed subsequent to the prosecution's brief, which the referee photocopied. Also completely ignored were our many substantiated charges of illegal and unconstitutional acts by the CEA personnel.

Section "M" starts on Page 96.

• • •

Section "N" is entitled "The Myriad Substantive Issues Ignored By The Referee, Who Thus Abdicated His Responsibilities," and is devoted to a summary of the entire extensive spectrum of issues of fact and law left untouched and still buried in the record, without judicial appraisal or even recognition of their existence by the referee in CEA Docket No. 167.

Section "N" starts on Page 100.

• • •

Section "O"—"Substantive Issues of Willfullness and Due Process"—sets before the Court two basic issues of law, willfullness and due process, that are intertwined within the overall pattern of the CEA's illegal acts against me in CEA Docket No. 167. By the simple expedient of simply stating that I "willfully" violated their rules, a statement unproven and factually false, the CEA could then arbitrarily abrogate the entire substantive concept of due process in our laws, in violation of my Constitutional rights. Also, the fact that evidence from the files of the CEA proves that even the most flagrantly willfull violators of their regulations are almost invariably afforded full due process procedure, violates my right to equal treatment under the

law. In addition, I question the basic Constitutionality of the CEA regulation permitting them to deprive a citizen of his right to due process by the arbitrary insertion of the word "willfull," without a judicial determination of actual willfullness, based on evidence, having been made.

Section "O" starts on Page 108.

• • •

Section "P" is entitled "Extensive Pattern of CEA Falsifications." It sets forth the details of the series of acts by CEA officials and employees wherein they have deliberately falsified facts and figures in the record of CEA Docket No. 167 in their conspiracy to achieve their pre-determined goal of discrediting me in the financial community and bringing about my ruin and that of The American Board of Trade exchange complex.

Section "P" starts on Page 121.

• • •

Section "Q"—"Substantial Damage Inflicted Upon Me by the CEA"—relates how the illegal, unwarranted and conspiratorial acts of this government agency adversely affected and seriously damaged my interests in the eight organizations which I created and head . . . how my career of 17 years in the field has been brought to an inglorious halt and threatened with complete destruction . . . how my carefully cultivated reputation for exemplary business conduct has been clouded by the CEA attack with the effect of undermining the public confidence which is the very foundation of my new enterprises . . . how I have lost the clear-cut competitive advantage that I enjoyed in the financial exchange community 2½ years ago when The American Board of Trade was launched, in that many of its unique and constructive concepts and operational features are now being adopted and used by other persons and entities in the field in their own plans to remedy the dysfunctions that are so glaringly manifest in the financial and commodity exchange community . . . the enormous mental and physical anguish suffered by both myself and my wife during these past two years as a result of CEA's illegal, immoral and totally undeserved attack, and the tremendous toll on our time and energy required to combat it, at the expense of both our business operations and our personal life.

Section "Q" starts on Page 125.

• • •

Section "R" is entitled "Judicial Officer Now Joins the Conspiracy" and sets forth the facts related to the present status, or juncture, of CEA Docket No. 167, wherein the Judicial Officer of the U. S. Department of Agriculture, having received the illegal and farcical "referee's report," has established the fact that he is now ready to do his part to further the conspiracy by issuing stipulations pertaining to the impending oral arguments before him, and the filing of briefs, which are in actual violation not only of conventional legal practice but of the CEA regulations pertaining thereto, and, it goes without saying, to my great disadvantage. Thus he has continued the pattern of illegal and malicious procedure and established himself as the final link in this evil chain which was criminally forged to shackle an idea, and the man behind the idea, to the destruction of both.

Section "R" starts on Page 129.

• • •

Section "S"—"Irreparable Harm and Damage Now Impends"—describes the pattern of substantial and irreparable harm that will engulf me if the CEA is allowed to take even a single further step in CEA Docket No. 167. The Judicial Officer, whose department has not ruled against the CEA in some 30 years, and who has already demonstrated his bad faith, must not be permitted the opportunity to administer the coup de grace to my reputation and career by nominalistically pronouncing me "guilty as charged," thereby fulfilling the agency's conspiratorial objectives. There could be no meaningful appeal from such a disaster, as later vindication could not possibly salvage or restore the wreckage of my life or career.

Section "S" starts on Page 134.

• • •

Section "T" entitled "Effects of Injunctive Relief Totally Constructive," outlines why the relief sought herein, in averting the irreparable harm to me that now impends if the CEA is allowed to continue the proceeding under CEA Docket No. 617, will in no way harm or cause damage to any third party or to the CEA itself.

Section "T" starts on Page 139.

• • •

Section "U"—"General"—sets forth simply that I have

tried to get the CEA to withdraw their proceedings under CEA Docket No. 167, by repeatedly pleading with them, but to no avail; and that I have not made prior application for the relief sought herein to this or any other Court.

Section "U" starts on Page 140.

• • •

For the convenience of the Court in studying and appraising the issues and areas of fact and law involved in CEA Docket No. 167, this affidavit is presented in topical Sections, identified by capital letter and statement of the topic. I respectfully call to the Court's attention that Section "K" —entitled "Sequence of Events and Acts"—is a presentation in chronological order of developments in CEA Docket No. 167, starting early in 1969 through to the present time. Section "K", therefore, may be considered that section of this affidavit that presents the "overall story" of CEA Docket No. 167. All other Sections are related to the body of the developments and events set forth under Section "K".

• • •

"D"

Record and Background of Experience

1) In organizing and structuring my various businesses and enterprises in the commodity and financial fields, I have worked regularly and closely these past five years with one to three highly competent attorneys on a sustained weekly consulting basis. I meet with each attorney for at least one one-hour session every week and each attorney is given an assignment which requires 3 to 4 hours of work on the outside. I also work closely with a Certified Public Accountant in setting up the various accounting systems for my organizations and working out the many problems attendant thereto.

2) In addition, in developing The American Board of Trade concepts and organizational structure, from approximately 1966 through 1969, I also worked closely with six men who possessed heavy academic backgrounds and actual experience in various disciplines, such as systems analysis, operations research, law, economics, accounting, and mathematics.

3) I should also like to call to the Court's attention that,

up until February, 1970, when the CEA issued its initial and unwarranted complaint against me and one of my companies, my entire background of experience and know-how in the legal, accounting, business organization and systems fields was used for the purpose of developing innovative and constructive patterns of activity in the world of investment and finance.

I say "constructive" patterns of activity, because not an iota of my background and knowledge in the legal, accounting, business organization and systems fields had been put to use in a law suit or litigation of any kind—until February, 1970, when I was notified of the CEA action against me in CEA Docket No. 167. In my years of experience in commodities and finance, as a broker, trading account manager, association executive, member of a leading commodity exchange, etc., I had never had a law suit filed against me, nor had there been a single law suit filed against any one of the many enterprises in which I actively participated. In addition, during that period of years, neither I nor any one of the organizations which I controlled ever filed a law suit against any person or firm.

4) During the 8 years, from 1956 through 1964, that I was a member of the Chicago Mercantile Exchange, I acted as broker and account trading manager for many hundreds of clients in speculative and investment transactions in shell eggs, frozen eggs, potatoes, onions, live cattle and pork bellies, with all trades conducted in accordance with the rules and regulations of the Chicago Mercantile Exchange as approved by the CEA. During that period, to my knowledge, the Chicago Mercantile Exchange did not receive a single complaint or protest from my roster of clients, who participated in thousands of transactions, relative to the manner in which their accounts were handled.

5) For a period of 10 years—from 1960 through October, 1969, specifically—I personally managed the trading accounts for a total of 1,500 clients, approximately, each of whom invested anywhere from $400.00 to $50,000.00 in their trading account and gave me full authority to trade on their behalf without consulting them at any time. Out of the activity of all these 1,500 clients, involving many millions of dollars in margin funds, commissions for my clearing house associates and myself, and millions of dollars of profits and losses, through numerous trading and investing campaigns,

successful and unsuccessful, over a period of 10 years, the CEA received, to my knowledge, only two minor complaints expressing dissatisfaction with the way things were handled. One was found to be without basis and the other was settled to the satisfaction of all concerned, including the CEA.

6) I should like to call to the Court's attention that of the total of 1,500 trading accounts that I personnally managed from 1960 through October, 1969, approximately *400 of the clients were in programs of activity which were not regulated or supervised by the Commodity Exchange Authority.* These commodities are referred to as "non-regulated" markets in the trade, are not covered by the Commodity Exchange Act, and include basic markets such as cocoa, sugar, rapeseed and silver. Even live cattle and pork bellies, now traded on several exchanges, were "non-regulated" markets when introduced in the commodity world in the early and mid-1960's.

The accounts of these 400 clients were carried on the books of Arthur N. Economou & Co., Inc. and these specific funds were co-mingled with the company's general cash funds, as is customary and is permitted by law in non-regulated trading accounts.

During the 10 years that these 400 non-regulated accounts were carried on my company's books and managed by me personally, involving many thousands of transactions, none of the exchanges on which the trades were implemented received, to our knowledge, any complaints or protests as to the manner that the account was being managed. We, ourselves, received only two minor complaints, both of which were adjusted to the satisfaction of the parties involved.

Throughout the 10 years of servicing the 400 non-regulated accounts, we were able to manage and service such accounts satisfactorily without supervision or regulation in any form whatever by the Commodity Exchange Authority.

* * *

"E"

General Issues Involved

In the instant action, I am asking the Court to please intervene to protect me against further concerted illegal and criminal attacks upon me by officials and employees of the

Commodity Exchange Authority and to prevent and forestall substantial irreparable damage which will occur if the Commodity Exchange Authority is allowed to proceed further in CEA Docket No. 167.

In truth and in fact, my struggle to loosen my company and myself from the unwarranted and destructive monolithic grasp of the CEA is now literally a matter of life and death for me and for the various organizations in the commodity and financial fields which I personally have created and nutured into life these past years.

It is my hope that the Court will intervene at this juncture in order to avert the irreparable damage which will occur if the CEA is permitted to take even another single step in Docket No. 167, also to properly adjudicate the substantive issues of fact and law which are interwoven in the tapestry of CEA Docket No. 167, and to offer redress for the substantive damage caused to date by the officials and personnel of the CEA.

The general issues involving illegal and criminal acts of officials and personnel of the CEA against me may be summarized as follows:

1) I hereby state that the action undertaken by the CEA in CEA Docket No. 167 and the various acts of officials and employees in connection therewith are in actuality an organized conspiracy for the specific purpose of discrediting me in the financial community and with the investing public, and, through me, to cause the downfall and destruction of The American Board of Trade Inc., a new exchange and marketplace. This conspiracy on the part of the CEA—involving deliberate manipulation and falsification of facts, figures, and definitions, and many acts on the part of the defendants which were illegal and intended for the purpose of accomplishing a vile and evil purpose, in violation of my basic Constitutional rights—is an abhorrent criminal offense on the part of the defendants.

2) I hereby state that the motivating influence underlying the CEA's decision to organize and implement a planned conspiracy to discredit me and to vitiate and destroy The American Board of Trade was the new exchange's openly-announced intention to implement unique and innovative operational concepts and features that are designed to eliminate the numerous serious dysfunctions of the present archaic exchange and marketplace systems which are in-

jurious and detrimental to the public interest and which not only would give The American Board of Trade powerful competitive advantages over the present array of exchanges and marketplaces but would also greatly reduce and even obviate completely the necessity or the need for the CEA's functions as they were envisioned by Congress 35 years ago when the Commodity Exchange Act was enacted.

3) I hereby state that one of the principal characteristics of the CEA conspiracy was an organized plan, or modus operandi, whereby the facts and issues that constitute my vigorous defense against the pure fiction and fabrications inherent in CEA Docket No. 167 would be effectively buried and completely ignored by the "judicial process" under which I am to be judged guilty or not by the CEA. As a result, I am completely helpless in the proceeding under CEA Docket No. 167 and have been and am unable to elicit so much as an acknowledgement of my defense in the proceeding in any manner whatever, let alone receive the impartial consideration of my defense to which I am entitled by law and by the Constitution. In addition, my charges and allegations of illegal and conspiratorial CEA acts against me have been completely ignored. On the other hand, the conspiratorial plan allows the CEA charges, masquerading as reality, to be supported and the record illumined by the fabricated "facts," "findings of facts" and "conclusions" of the CEA investigatory, prosecution and judicial officials and personnel that are involved in this criminal conspiracy. Their combined efforts, synchronized and in congruity, are aimed at achieving the pre-determined objective of ruining me personally and bringing about the downfall of The American Board of Trade. Thus I am confronted with a structured monolithic assault which allows for no counteraction, excludes the concept of due process under law, excludes the concept and practice of the morality and ethics involved and against which my extensive and desperate attempts to counter-posit any facts or issues in my defense are completely ignored and consigned to oblivion by the judiciary arm of the CEA. I hereby state that this monolithic assault of the CEA against me is not only a violation of my fundamental rights as a human being and a citizen, but makes a mockery of the judicial processes that supposedly are an integral part of the present Administrative Procedures Act and I herein implore the Court to intervene

and put a stop to this misapplication and abuse of powers granted to an administrative agency by our Federal laws.

4) I hereby state that the callousness of the CEA hierarchy in planning and launching the pernicious conspiracy to vitiate and destroy the American Board of Trade has not only caused substantial damage to me and my various closely-linked and integrated enterprises, and now threatens even greater and irreparable damage, but also has cast a serious cloud over the present administrative procedures of the CEA. Congress did not intend to empower an agency to create its own rules and regulations, supply the judicial interpretation thereto, carry on investigations in almost any manner it so desires, including the actual manufacture of evidence as and when needed, set up prosecution procedures on the basis of its own rules and specific objectives, and finally synthesize the judicial functions directly into that of the prosecution, so that the procedural approach represents a solid, monolithic body of action, against which there can be no defense once the juggernaught is given momentum, such as in the collective body of acts and events in CEA Docket No. 167. Least of all was it the intent of Congress that the agency use its official power to accomplish personal destructive purposes entirely outside the scope of its proper function as administrators of the Commodity Exchange Act.

Such callousness and disregard of moral and ethical issues is even more adhorrent when viewed in light of our nation's critical need currently to restructure various conceptual and operational areas of the financial community, which have been found wanting from the standpoint of the U.S. investors' needs and protection—yet the CEA can indulge itself in an illegal and criminal model of deception, presented to the financial community in the form of CEA Docket No. 167, in order to eliminate a real threat to the many outmoded and detrimental concepts which it guards with such misplaced zeal and assiduity that it actually contravenes rather than administers the basic constructive purposes and objectives of the Commodity Exchange Act, as set forth under Section 3 and Section 4a of that Act.

I implore the Court therefore, to intercede at this juncture in CEA Docket No. 167, not only to put a stop to the CEA conspiracy woven in the structure and fabric of said proceeding and to offer me protection from substantial irreparable harm which impends, but also to judicially examine

and study the agency procedures involved which enabled the CEA to deeply and effectively bury the myriad substantive issues of due process, of constitutional rights, of actual entrapment, of legality, morality and ethics—all of which I have been unable to surface in my defense these past 23 months, owing to the combined and synthesized conspiratorial efforts of the investigatory, prosecution and judicial departments of the CEA. In this manner, I respectfully suggest, the Court will be able to determine what constructive changes need be made in the Commodity Exchange Act to allow a citizen to propose and implement what he considers constructive measures, concepts and ideas without fear of being bludgeoned to death by an administrative agency jealously guarding the molding structure of outworn methods and operations that long ago served a purpose but today result in dysfunctions that are injurious to investors, to trade groups and to the economy of our nation.

* * *

"E-1"

Specific Issues Involved

The following is simply a partial listing and a brief description of the myriad issues of fact and law which are interwoven in the framework of the CEA conspiracy against me, which have violated my Constitutional and basic rights as a citizen, deprived me of due process of law, caused great damage, and now threaten me with substantial irreparable harm if the Court does not intervene at this time. I hereby allege, based upon information and belief:

1) . . . that the issuance of the initial complaint by the CEA Docket No. 167 in February, 1970, retrospectively alleging underfinancing months after I had discontinued trading under CEA rules and had launched The American Board of Trade, was based on fictitious evidence deliberately manufactured by the defendants, in violation of my Constitutional rights.

2) . . . that the CEA has given the word "willfull," as used in Section 6(b) of the Commodity Exchange Act and also under Section 0.3(c) of the rules thereunder, a unique interpretation to meet the special conspiratorial requirements of CEA Docket No. 167, in violation of my Constitutional rights, as more fully set forth under Section "O" of this affidavit.

3) . . . that the CEA abrogated all semblance of due process under law in its conspiracy to railroad me and The American Board of Trade to our doom, as also set forth in detail in Section "O" of this affidavit.

4) . . . that I was deliberately held entrapped by the CEA under their Rule 1.17 from February, 1970, when I requested to be transferred from that Section to Section 1.31a, which does not have minimum financial capital requirements, through August, 1970, and that it required a petition to the Secretary of Agriculture to be relieved from the entrapment. This entrapment enabled the CEA to expand their initial complaint against me, even though I had not engaged in CEA-supervised activities since October 1969. This entrapment procedure was part of the CEA criminal conspiracy and a violation of my Constitutional rights.

5) . . . that the amended and expanded complaint issued in June, 1970, while I was being held in bondage by the CEA is an illegal instrument of law and violated my basic rights as a citizen.

6) . . . that the amended complaint contained figures from our financial records that had been *deliberately and surreptitiously altered and falsified* by a CEA auditor and had no relationship to our true financial standing, in violation of my basic rights.

7) . . . that the act of the CEA auditor in falsifying our financial records is a criminal act and a violation of my rights as a citizen.

8) . . . that the falsification of our records was knowingly confirmed and approved by higher officials of the CEA, a criminal act, in violation of my basic rights.

9) . . . that the discrediting, harmful and false figures, which were made an integral part of the amended complaint, were made available to the national press, credit agencies and interested persons, in violation of my basic rights.

10) . . . that the hearing conducted in August, 1970, at which I appeared pro se, was a sham and a farce, and a violation of my right to be heard and to defend myself against the conspiracy, as more fully set forth under Section "L" of this affidavit.

11) . . . that the referee, Jack W. Bain, conducted the hearing in a criminal and illegal manner in violation of my constitutional rights.

12) . . . that the so-called "referee's report" in CEA Docket No. 167, an actual photo-copy of the prosecution's brief, is a sham and a judicial fraud, and that the referee in presenting the photo-copies as "his" findings of fact, "his" conclusions and "his" recommendations—without mentioning our side of the story—is not only in violation of CEA procedural rules but also displayed judicial arrogance and misconduct as more fully set forth in Sections "M" and "N" of this affidavit, in serious violation of my rights as a citizen.

13) . . . that the CEA has falsified and fabricated numerous facts and figures in the record of CEA Docket No. 167 and that singly and collectively the falsifications, as more fully set forth and described in Section "Q" of this affidavit, are a violation of my rights as a citizen.

14) . . . that the monolithic structure of the CEA attack on me, as generally set forth under Section "E" of this affidavit, against which there can be no effective or meaningful method of defense, is a violation of my Constitutional rights.

15) . . . that the judicial officer's insistance that I now file briefs prior to the oral argument, in connection with our exceptions to the referee's report, rather than subsequent, or in addition, to oral argument, as provided by procedural rules of the CEA, is a violation of my basic rights.

16) . . . that although the defendants above named have purported to act in their capacities as officials and employees of the CEA and the U.S. Department of Agriculture relative to their respective acts in CEA Docket No. 167, said defendants are actually acting without authority of the law and in violation of the Constitution and Statutes of the United States, and their acts, singly and collectively, are disturbing examples of the power of the government being misused for selfish and personal reasons in pursuit of evil objectives.

• • •

"F"

The Development of My Business Philosophy

I joined the Chicago Mercantile Exchange in 1956 and for a period of four years thereafter was active in the capacity of broker, soliciting and placing orders on the exchange for

eggs, potatoes, onions and other commodity futures contracts. During that same period, I also solicited and handled orders for wheat, rye, corn, oats, soybean oil and soybean meal futures contracts traded on the Chicago Board of Trade. Although I was not a member of the Chicago Board of Trade, I regularly received brokerage commissions for orders placed thereon, through reciprocal arrangements with other brokers who were members of the Chicago Board of Trade.

During this period of four years, I became, first, generally, then later, acutely, aware of the fact that the large majority of traders and investors in commodity futures markets lost money and in many instances lost quite heavily. I was not surprised therefore, that a comprehensive study conducted by a government agency revealed that approximately 90% of traders and investors in commodity futures had only financial loss to show for their efforts in commodity futures speculation.

In approximately 1960, I also became aware of what I considered an anomaly in the world of U. S. finance, business and commerce, in that the commodity exchanges in our country were looked upon and considered as time-honored, traditional, unchangeable "institutions," the functions of which were to a) provide marketplace facilities for commodities; b) establish or fix prices, or reference points for pricing; and c) provide hedging facilities and modiums for trade and commercial interests. In the implementation of these functions, however, severe social and economic dysfunctions became evident and manifest—yet such dysfunctions appeared to be taken for granted as a part of the modus operandi of these "institutions."

Specifically, these dysfunctions were: 1) Constantly distorted prices of the commodities involved, and capricious and unwarranted price moves; 2) heavy and continuing financial losses to the trading and investing public; 3) disservice to trade interests and groups; 4) disservice to the economic operational structure of our nation.

I respectfully submit to the Court that the foregoing analysis of basic dysfunctions of our commodity exchange system represents a point of view which is shared by many businessmen, trade groups and members of our Congress. In the early 1960's, for example, Congress passed a law actually prohibiting the trading in onion futures markets.

Since the early-1960's, bills have been regularly introduced in Congress, and a Congressional hearing has been held, to prohibit trading in potato futures markets. In recent years, trade group and investor dissatisfaction with the modus operandi and functions of egg and other markets have been publicized in the trade and financial press.

In 1960, I felt that I could no longer participate blindly as a broker in the servicing of customers within a system whereby the customers had such a slim chance of success. However, I did feel that I, personally, had achieved sufficient knowledge and expertise to successfully manage the trading accounts of other investors, rather than simply executing their orders on organized exchanges. It was in 1960 that I conceived and introduced the concept of the Economou Supervised Trading Programs wherein customers would join a specific trading program and authorize me to make and implement all trading decisions on their behalf.

It was in the early 1960's that I also conceived the need for an Association in the commodity trading field in order to encourage, aid and engage in education in our chosen area of activity and to disseminate information, knowledge, data and special studies to its members. This concept was actualized in 1965, with the formation and launching of The American Association of Commodity Traders, and its official publication, the "Commodity Journal" as more fully set forth, as background and supplemental material of interest to the Court, under Section "G"—"The AACT"—of this affidavit.

In my role as manager for the Economou Supervised Trading Program, I gradually came in contact with and aware of basic problems which derived from the dysfunctions of the present exchange system.

For example, I was subjected not only to unwarranted and capricious price moves in the various futures markets but also to a very special form of penalty or "tax" for the privilege of executing my clients' orders on an exchange. This penalty or "tax" on my clients was in the form of having to pay a higher imposed market price for any contracts that I desired to buy and having to accept a lower market price for any contracts that I desired to sell in a given market. This penalty was imposed upon my transactions by the floor traders operating in their traditional

role of "market makers" on the commodity exchanges. Specifically, the moment it became apparent that I was in the market to buy, say, 100 contracts of soybean meal for one of my trading programs, the price of soybean meal at that time automatically went up by about $20.00 per contract; conversely, the moment it seemed that I may have wanted to sell 100 contracts of soybean meal, the price that I received immediately was lowered by $20.00 per contract.

This type of penalty, or "tax," imposed upon the orders flowing into a market represents a form of covert income to the floor traders, over and above the brokerage commissions that are openly and legally charged for the transactions. In the soybean meal example mentioned in the preceding paragraph, the regular brokerage commission in the futures market was $30.00 per contract—representing cost of having an order bought-then-sold, or sold-short-then-bought. On my transactions, however, my customers were literally forced to pay $20.00 per contract more than the market when buying, and receiving $20.00 per contract less than the market when selling or liquidating the commitment —for a total of $40.00 per contract penalty, plus the regular $30.00 commission, for a total of $70.00 charges for a round-turn commission on a single contract.

Total cost to my clients on a 100 contract trading commitment, at the $70.00 per contract rate, would be $7,000, for the "privilege" of having our orders executed on the exchange. Generally, such a transaction may be completed on the floor of an exchange in less than an hour—and the cost of such a service, to my clients, would be $7,000 per hour.

Usually, each of my clients would participate in a Program with a 1- or 2-contract commitment, which would require a $500 or $1,000 margin deposit. The $70.00 per contract cost thus represented a 14% dilution of capital in just one single trading transaction. Small wonder, then, that 90% of the public loses money when participating in the trading activities of the "institutions" regulated and supervised by the CEA.

I protested this commonly-accepted but detrimental aspect of the present exchange system to Mr. Harper, regional administrator of the Chicago office of the CEA, Mr. McMinn, regional administrator of the New York office of the CEA

and to the national administrator of the CEA, but received no acknowledgment of my protests or indication of what consideration my protests received.

Such excessive covert costs involved in buying and selling on the traditional exchanges induced by the presence of traders roaming the floors for situations or opportunities for garnering income over and above their regular commissions were against public policy and that was one of the reasons that prompted my decision to resign from the Chicago Mercantile Exchange in 1964.

The even more substantive reason that prompted my resignation from the Chicago Mercantile Exchange in 1964, however, was the realization that the price moves and the price swings on traditional exchanges constantly represent distorted and artificial values of the commodities traded thereon, and that such distortions are induced by and a covert function of the floor-trading activities on the part of the members of the exchanges.

Such price distortions form the basis of a substantial area of profit opportunities for the member floor-traders and said profits are garnered from the unknowing and unsuspecting public, who are trapped into buying a commodity when price has been forced, by the floor traders, to a temporary artificial level above true value, or, conversely, selling a commodity when price has been driven temporarily to an artificial level below true value of the commodity.

Numerous market tactics, stratagems and practices are employed and permitted by the exchanges as a means of inducing temporary dislocations and distortions of values, in order to provide profit opportunities for the traders. Such tactics, stratagems and practices include market rumors, concerted buying and selling "drives," the "catching of stop loss orders," deliveries or non-deliveries against open commitments, which serve as means with which to induce temporary dislocations within the price structure of a commodity.

Such practices serve not only to distort day-to-day values in a market, but adversely influence the intermediate and long-term price structure of a commodity, to the detriment of trade groups and have an adverse effect on consumer prices and on the broader economic structure of our country. These views are shared currently by trade bodies and economists in the potato, egg and silver market fields, who have

publicly expressed such views and have sponsored State and Federal legislation to prohibit or revise various aspects of the present exchange system.

I respectfully call to the attention of the Court that the dysfunction of commodity exchanges, in the form of constantly distorted and artificial prices, is not characteristic of the securities exchanges of our country, which are registered and are operative under the Securities Act of 1934, in which the concept of a *specialist* is clearly spelled out and incorporated in the Act as an integral part of the price-making function of the securities exchanges.

The basic function of specialists in the securities traded on the exchanges is to provide a liquid, orderly market for securities, to prevent inordinate and harmful price fluctuations and distortions. Such functions are truly vital to the operative and conceptual structure of the securities exchanges and rigorously supervised by the U. S. Securities and Exchange Commission.

Yet, the Commodity Exchange Act makes no mention whatever of the specialists function on the commodity exchanges, provides no means of eliminating harmful distortions and fluctuations—in effect allowing the floor traders considerable freedom to force prices one way or the other, or to permit undue and uncontrolled price moves by simply remaining on the sidelines and not taking a position, when it is to their economic advantage to employ the stratagem of inaction.

In the years from 1960 through about 1967, I also became aware, through painful experience, of still another weakness within the structure of the traditional exchange system and that that weakness represented an additional dysfunction that was detrimental to the public interest. I am referring to the inefficiency of the bookkeeping and accounting systems, within both the traditional commodity and the securities exchange systems, wherein each member or member firm sets up and purports to implement an accounting system to service his or its clients.

Conceptually and operationally, each member or member firm now has an individual accounting system all of their very own. There are about 500 operational memberships on the Chicago Board of Trade, another 300 on the Chicago Mercantile Exchange, another 300 on the New York Mercantile Exchange, and about 500 on the New York Stock Ex-

change—to mention four of the nation's major exchanges. Within the structure of the total of about 1,600 bookkeeping and accounting systems within these four exchanges, servicing millions of customers, it is a proved certainty that bookkeeping and accounting errors of serious and damaging proportions will be commonplace, to the detriment of the investing public and the economy of our nation.

The dysfunctions of our exchange system as presently constituted, became painfully clear to our entire nation from 1968 onward and the problem still besets the financial community and is receiving close Congressional study and scrutiny.

It became apparent to me that certain basic dysfunctions were *inherent* in the present financial and commodity exchange systems, and that these dysfunctions and misalignments *were caused by or were a function of the traditional structure of the exchanges themselves,* rather than motivated by greed, or short-sightedness, or selfish intent on the part of the membership of the exchanges. From 1964 or 1965 onward, I became increasingly occupied with the study of exchange structures, their conceptual and operational aspects and features, with the view of possibly contributing remedial suggestions and ideas to the community. I soon found out, however, that the traditional financial and commodity marketplace communities are quite unresponsive to any suggestion for basic conceptual change and, as has now become apparent, the necessary changes will have to be implemented through eventual legislation and imposed upon a lethargic financial community.

With the assistance of associates who possessed backgrounds in the disciplines of economics, operations research, law and accounting, I conducted extensive and intensive analysis from 1966 through 1968 of the present financial and commodity exchanges with the view of creating and implementing a new exchange and marketplace complex that would incorporate concepts and operational features to remedy or eliminate the present dysfunctions and would contribute constructively, rather than detrimentally, to the economic system of the U. S. and to public welfare.

The analysis developed by my associates and myself in 1966/1968, showed that any new marketplace and exchange complex would require unique conceptual features and would differ substantially from the modus operandi of traditional exchanges. Otherwise, it would be impossible to neutralize and offset the many misalignments and shortcomings of the present system.

First and foremost among the conceptual and structural changes would be the need for a decentralized membership organization—decentralized geographically, State by State, along similar, but not congruous, lines as the banking system of our nation, which in turn is based on and within the Federal Reserve System, the central banking authority—in place of the traditional structure whereby the membership is a tight knot of giant brokerage houses all located within a stone's-throw of the exchange.

Secondly, the new exchange and marketplace would require both centralized and decentralized public financing. In other words, the central "mother" complex—the exchange and its operational affiliates—would and should be publicly financed, and the memberships' decentralized operational units, on a State by State basis, also would and should be publicly financed.

Thirdly, the bookkeeping and accounting systems and functions would and should be structured on a strictly centralized basis and performed by a corporate operational affiliate, publicly financed.

Fourthly, the specialist function would and should be structured into commodity trading on the new exchange, even though the specialist function is traditionally unknown on present commodity exchanges and is not even mentioned in the Commodity Exchange Act.

Fifthly, the specialist function on the exchange, traditionally performed by individual members of securities exchanges, would and should, instead, be performed by an operational corporate affiliate, publicly financed.

Lastly, trading on the floor of the exchange by members for their own account would and should be strictly prohibited.

The foregoing conclusions, based on the 1966/1968 analysis, served as a base on which to conceptualize, organize and launch The American Board of Trade, Inc., the new exchange and marketplace, in 1969, as more fully set forth, as background and supplemental information of interest to the Court, under Section "H"—"The ABT Complex"—of this affidavit.

Starting about 1967, I also realized that the formation of

a new exchange and marketplace, in the form and structure of The American Board of Trade, Inc. and its operational affiliates, would make substantial demands on my time, attention and energies. I realized that once I got underway with the active planning and organizing of the ABT complex that I would probably be unable to continue my activities as manager of The Economou Supervised Trading Programs.

It occurred to me that the hundreds of clients in the Programs could more readily and more constructively be handled if their activities were merged into a mutual fund concept, which would permit greater trading flexibility but the managing of which would not require as much of my time as the Supervised Trading Programs. In this manner, I could capitalize on my background of account management experience and also provide personal income for myself and generate income also for Arthur N. Economou & Co., Inc., who would act as broker for the mutual funds. During 1967, I had several talks with both the regional office of the CEA and of the U. S. Securities and Exchange Commission relative to the feasibility of organizing trading syndicates in the form of limited partnerships that could be registered and sold as a securities issue under the Securities Act of 1933. Both governmental agencies agreed to the feasibility of such a concept and structure.

In 1967, I commenced work on the organizing and filing under the Securities Act of 1933, two trading syndicates in the form of limited partnerships, as more fully detailed under Section "I"—"The Two Trading Syndicates"—of this affidavit.

• • •

"G"

The AACT

The American Association of Commodity Traders, of which I am founder and president was organized in 1965 as a non-profit organization and over the past 6 years has attracted about 1,500 members, who pay dues of $12.00 a year and receive the bi-monthly "Commodity Journal" of which I am editor, with their membership.

The objectives and purposes of the AACT, as set forth in its By-Laws are as follows:

"To encourage, aid and engage in education and hold

courses of instruction in the fields of commodity trading and commodity futures markets . . . To engage in organized research for a better understanding of commodity futures markets . . . To study the various factors that influence commodity futures prices . . . To disseminate information, knowledge, data and special studies of value to members . . . To publish the results of pertinent and significant studies . . . To assist in the development of more adequate educational programs . . . To establish and maintain a commodity reference library and research center . . . To sponsor conferences, groups and meetings planned to implement the purposes of the Association."

The "Commodity Journal," official publication of the AACT, carries 3 or 4 full length feature articles in each issue, which are written by AACT members. These articles are of a technical or semi-technical nature. The authors usually possess a background not only of actual trading experience but also in one of the major disciplines, such as mathematics, operations research, accounting, etc.

From time to time meetings are held in the form of seminars or symposiums. Such meetings have been attended by from 20 to 50 members and guests and have been held in Chicago, New York, Baltimore, New Haven and Hartford, Conn., and Boston.

AACT maintains a book department featuring about 35 books devoted to various aspects of commodity trading and related subjects. The books are sold at regular publisher's list prices.

One of the outstanding educational aspects of AACT is that it overprints by 1,000 to 1,500 copies each of the issues of the "Commodity Journal," and publishes a catalog of the "Journals" that are available. Currently AACT has an inventory of about 20,000 Back Issues of the "Journal," which are sold to new members at $1.00 per copy, resulting in frequent orders for all of the 36 or 37 back issues still in print.

Editorial and administrative functions of the AACT are performed by Arthur N. Economou & Co., Inc., which since 1965 has enjoyed harmonious and constructive relationships with the AACT.

• • •

"H"

The ABT Complex

The ABT exchange and marketplace complex comprises The American Board of Trade Inc., The American Board of Trade Service Corp., The American Board of Trade Clearing Corp. and The Journal of Investment Finance, Inc., all administered by The Economou Financial & Development Corp., of which I am the president and controlling stockholder.

The ABT complex commenced operations in November, 1969. Since then it has been active in operating a market for silver, silver futures, silver coins, silver coin futures, foreign exchange, in the sale of its own commercial paper as a means of short-term financing, and as an agent for its clients for U. S. Treasury bills. The ABT is particularly active in "spot" silver and silver coin transactions—those intended for actual delivery, rather than speculation—as it is the only exchange through which individual investors may purchase as little as a single bar of silver or bag of coins and have it delivered directly to their home-town bank.

The activities of the ABT to date are not subject to regulation by either the U. S. Securities and Exchange Commission or the CEA under the Securities and Exchange Act or the Commodity Exchange Act, respectively. In launching the ABT, I had envisioned and planned and indeed our Articles of Incorporation called for registering the ABT with both the U. S. Securities and Exchange Commission and the CEA, in order to expand our base of services to the investing public and to offer a much broader scope for our new exchange. However, the conspiracy of the CEA, whereby the CEA complaint was issued and related acts were implemented by the CEA, has effectively vitiated and completely blocked our attempt to register with the U. S. Securities and Exchange Commission and the CEA itself, as fully detailed in Section "Q" herein.

The ABT concept is built upon radically new and innovative conceptual, organizational and operational approaches, the objectives of which are to remove the stumbling blocks and dysfunctions so firmly entrenched in traditional exchange operation, as outlined under Section "F" in this affidavit, and to provide a trading arena that operates to the

benefit of the investing public, as well as that of brokers, dealers and members.

These unique concepts—which are: A) Decentralized membership structure, patterned along the general lines of the U. S. banking system; B) centralized bookkeeping and accounting; C) introduction of the specialist function in commodity trading; D) elimination of floor trading on the exchange by members—would serve to greatly reduce the need for the CEA's functions, and also greatly diminish its areas of authority, as envisioned by Congress when the Commodity Exchange Act was enacted, and were the motivating influence that generated the CEA conspiracy to eliminate the ABT from the exchange community before the fledgling exchange had an opportunity to develop operational muscle.

Set forth below is a description of the unique ABT conceptual and operational features, in order that the Court may fully understand their impact upon CEA officials and personnel:

• • •

A) Decentralized Membership: The ABT is a membership organization of qualified, franchised dealer-brokers and agents. as well as individual traders and investors. This organizational structure provides for *a decentralized network of sales and distribution* personnel and agencies throughout the country, rather than a tight knot of giant brokerage houses all located within a stone's-throw of the exchange. Each ABT dealer-broker or agent operates within a defined geographical area.

Spreading the sales and distribution channels throughout the country also enables the ABT to serve all its clients more effectively by allowing for individual and geographical differences in investment goals and patterns. Each dealer-broker can serve the residents of his own area in an effective, personal manner rather than having his perception of his clients' needs confused by what divergent voices on Wall Street or in Chicago are saying.

Exchange and marketplace facilities for The American Board of Trade are provided by an affiliate, The American Board of Trade Service Corp., which plans major financing through the sale of appropriate stock issues to the public. This is the first time that an exchange has attempted to seek its financing directly from the public. The franchised dealer-broker members will also seek financing through the

sale of appropriate stock issues—with such stock issues confined to the specific State or region in which they operate.

The implementation of a decentralized membership on a regional franchise basis, coupled with the plan for both national equity financing for the central complex plus local or regional equity financing for the franchised dealer-broker memberships, would place the entire ABT complex directly under the regulatory wing of the U. S. Securities and Exchange Commission and the regulatory bodies of the States in which the ABT franchises were operational. Pragmatically, then, the ABT complex would function under the duality of Federal/State regulation and supervision which has proved so outstandingly successful in our decentralized banking system. Thus, once the ABT developed operational strength and scope, the need for CEA regulation and supervision would be eliminated and the CEA would be relegated to a role of an advisory body, if that.

B) *Centralized Bookkeeping and Accounting:* Centralized bookkeeping, accounting, and clearing facilities are provided by The American Board of Trade Clearing Corp., which will also be publicly financed. The ABT Clearing Corp., in itself, constitutes a radically new departure from traditional exchange housekeeping. Under the traditional system, bookkeeping, accounting, and clearing responsibilities have been divided among thousands of individuals and houses. But the recent condition of the backrooms of Wall Street illustrates that the majority are not able to cope with the problems this presents. Outmoded equipment and techniques, concepts and systems no longer adequate in today's world, make it almost impossible for business to be conducted in an orderly manner.

By putting all necessary bookkeeping, accounting, clearing records, equipment and personnel into a centralized system and organizing them all under a single uniform inclusive system, The ABT Clearing Corp. can provide an efficient, workable means of handling the vast amount of paperwork and record-keeping necessary to the operation of the exchange. Public funding of the Corporation will provide the capital necessary to purchase the computerized data-processing equipment, and to hire personnel qualified to operate these systems. Paperwork backlogs will be lifted off the backs of individual broker-dealers and agents, leaving them and their staffs free to serve the needs of their clients, rather than muddling through mounds of papers.

It is quite obvious that the ABT system providing for centralized bookkeeping and accounting facilities would completely eliminate the need for the extensive auditing and bookkeeping regulatory functions which the CEA traditionally performs relative to the thousands of decentralized systems now operational within the registrants under the Commodity Exchange Act. Their function in this capacity would be reduced to monitoring the accounting systems of a handful of exchanges.

C) *Introduction of the Specialist Function:* Among the nation's organized commodity exchanges, only The American Board of Trade has envisioned the crucial and vital need for and has taken the necessary steps to inaugurate the function of Specialist on its trading floor—a function that is essential to assure fiuid and orderly commodity markets and to avoid the unduly wide and capricious price swings which are characteristic of the traditional commodity exchange price-making system to the detriment of private traders and investors and trade interests in the nation's financial community.

It is significant that the Specialist is one of the cornerstones of all securities exchanges and that the function of the Specialist is clearly spelled out in the Securities Exchange Act of 1934 and the rules and regulations thereunder. However, the vital function of Specialist is not even mentioned in the Commodity Exchange Act, nor have commodity exchanges incorporated the concept in their operational procedures—until The American Board of Trade was established.

It is the position of The American Board of Trade that its customers must be protected and cushioned against the financially and psychologically injurious effects of sudden, unreasonable and unwarranted price fluctuations and that the wholesome contribution of the Specialist concept must form an integral and basic part of an exchange. It is also the position of the ABT that the Specialist function, in stabilizing and helping to provide orderly markets, cannot be properly performed by individuals or firm members of an exchange but requires the resources of a publicly-financed corporate body to perform the critical tasks and functions involved.

The function of the Specialist within the operational structure of the ABT exchange and market-place complex

has been assigned to and will be performed by the operational affiliate, The American Board of Trade Service Corp.

By introducing the specialist function on a commodity exchange, the ABT has focused sharply on one of the major dysfunctions of the present exchange system and upon the apparent unwillingness of the CEA to structure remedial rules and regulations to meet the basic requirements of the Commodity Exchange Act, which is specifically concerned with undue and unwarranted price moves which hinder interstate commerce and are detrimental to the public interest. Thus, the CEA myopically endeavored to eliminate the threat posed by the ABT, by conspiring to destroy it in its infant stage.

D) *Elimination of Floor Trading by Members:* The American Board of Trade prohibits trading by members on the floor of the exchange for their own account. This may perhaps be one of the most sensitive areas of innovative change for the ABT, but it is one of the most important. We believe that when exchange members trade on the floor of an exchange in large groups, it is impossible for them not to be influenced by market action, either favorable or adverse to their own positions, and there is no possible way to avoid unified trading activity which serves to distort prices, whether generated by crowd psychology or conscious planning. The temptation is literally irresistible, under favorable market conditions, to "push" the market in the desired direction by concerted trading action. By prohibiting floor trading on the ABT, members place their own and their customers' orders by phone and are unaffected by the traditional crowd psychology, thus the groundwork has been laid for an exchange in which price determinations will be based on true market conditions, rather than being subject to the wild and meaningless fluctuations that can and do occur on an uncontrolled trading floor. Such capricious fluctuations and erratic price swings often provide unrealistic, supported gains to a handful of controlling members, while severely damaging or even wiping out individual small traders.

Here, too, it is readily apparent that the ABT has focused on one of the glaring weaknesses of the traditional exchange system—the dysfunctions induced by the presence of floor traders—and that the elimination of floor traders even on a single exchange, such as the ABT, at the outset, could

attract widespread attention and adoption, thus causing further loss of power and authority to the officials and personnel of the CEA.

• • •

The ABT will publish "The Journal of Investment Finance," a journal devoted to investment planning, methods and opportunities, beginning in the latter part of 1972. The Journal of Investment Finance, Inc., has already begun publication of two popular investment information services —"The Silver Market Letter" and "The Foreign Exchange Market Letter." The ABT is interested in and responsive to the events taking place around it in the financial world, and of which it is a part. Thus we feel it is only fitting that the ABT should be publisher of investment news and information services that touch the pulse of the investment scene, and keep investors, traders and speculators informed and up-to-date on developments both within and without the ABT.

Though other exchanges have published newsletters of one kind or another, no other exchange has ever attempted to publish a major journal that will both serve the needs of its members and clients, and also be a significant financial publication in its own right.

The entire American Board of Trade exchange complex and The Journal of Investment Finance, Inc., are managed by The Economou Financial & Development Corp., of which I am president and controlling stockholder.

The Economou Financial & Development, Inc. filed an issue of common stock, in the amount of $300,000.00 with the U. S. Securities and Exchange Commission in 1969, and the filing became effective on May 26, 1970.

Proceeds from the sale of the EF&D stock issue were for the sole purpose of supplying the "seed" capital required to launch the ABT complex. In its letter of comment concerning the EF&D filing, the U. S. Securities and Exchange Commission remarked that the magnitude and scope of the ABT exchange and marketplace complex would require substantial financing over and above the financing undertaken by the EF&D in its filing and requested that a statement to that effect be included in the offering circular relative to the initial stock offering.

The CEA zeroed into the picture with its amended and expanded complaint against me under CEA Docket No. 167

on June 22, 1970, just as we started to advertise the EF&D stock issue in the financial press and were mailing out the offering circular to prospective shareholders.

The amended complaint carrying the CEA falsified figures of our financial standing and a completely untrue and distorted picture of financial deterioration on the part of ANE & Co., Inc., was released to the financial press shortly after June 22, 1970, before we had the opportunity to file our answer. Thus, by coinciding the issuance of the amended complaint with the announcement of the EF&D stock issue, of which they were well aware, the CEA succeeded in demolishing my image and that of the ABT in the financial community and negating any possibility of success of the stock issue.

It follows, of course, that this, in turn, eliminated completely the major financing required to implement the announced objectives of the ABT. Thus the CEA has, so far, cleverly accomplished the stagnation of the new exchange, with what they hope to be the "death blow" impending, when the judicial officer pronounces his guilt verdict, with the new wave of attendant national publicity.

* * *

"I"

The Two Trading Syndicates

As mentioned in the preceding section of this affidavit, the two trading syndicates, The Economou Precious Metals Futures Trading Syndicate and The Economou Grain Futures Trading Syndicate, structured in the form of limited partnerships and based on the mutual fund concept of a daily net asset valuation of each partnership "unit," were an outgrowth of my management experience with the Supervised Trading Programs.

During 1967 and early 1968, I worked with several of my associates in developing the operational and legal aspects of the Precious Metals Syndicate, which was the first of the two syndicates to be filed with the Securities and Exchange Commission for registration under the Securities Act of 1933. Registration took place in mid-1968 and was made effective by the SEC on March 20, 1969.

The birth of this new mutual fund in the commodity field, I respectfully point out to the Court, held promise of con-

structive contributions, to both the average investor and to me, personally, as general partner and manager of the fund, and to Arthur N. Economou & Co., Inc., as exclusive broker for the syndicate. Average investors would benefit, in that they could participate on a low-risk, low-leverage basis in the futures markets for silver, platinum and palladium, without fear of being "knocked-out" with losses in their investment accounts which so frequently occur when an average investor attempts to individually manage his own trading or allows a professional manager to manage the account on the investor's behalf.

The outstanding contributions that the Precious Metals Syndicate would make to my welfare in the commodity field were simple, basic and two-fold.

a) As manager I could directly employ my extensive background of account management and ask and receive a fair return on or compensation for the expertise that I had developed, in the form of a management fee totalling 8% annually of the average overall value of the Precious Metals Syndicate. This source of income would be of critical necessity to me during the two years that I estimated would be needed to launch the ABT complex, with equity financing as a base source of funds;

b) Under arrangement with the Precious Metals Syndicate, Arthur N. Economou & Co., Inc. would act as exclusive broker for the limited partnership and this agreement would thus provide my company with an urgently needed source of income in the form of commissions derived from the brokerage that would be generated by the Precious Metals Syndicate regular trading and investment commitments in silver, platinum and palladium markets. Moreover, this arrangement for additional indirect compensation for me, as managing partner, was clearly spelled out in the Prospectus which was made effective by the Securities and Exchange Commission on March 20, 1969.

With the Precious Metals Syndicate filing effective on March 20, 1969, the stage appeared set for me to gradually phase out of the Supervised Trading Programs, finalize plans for the stock issue of the EF&D, which would seek $300,000.00 from the public as "seed money" to launch the initial development stages of the ABT complex, and to actively advertise, promote and start trading and investing in the Precious Metals Syndicate.

One of the stipulations of my agreement with the Precious Metals Syndicate, as its general managing partner, was that I would not start trading for at least 90 days after the issue became effective and we were permitted to offer the limited partnership units to the public. This lag I felt, would enable me to implement a constructive withdrawal plan from my previous activities and would permit a gradual phasing-in into the new conceptual and operational aspects of handling a mutual fund that allowed for a central activity pattern of trading, rather than the individualized handling of each managed account, as had been an explicit aspect of the Supervised Trading Programs.

For such reasons I "made haste very slowly" with the Precious Metals Syndicate promotions and trading, being aware that any mishap or trading mistake at the initial stages would most critically effect the sale of the stock issue.

By July, 1969, I had completed my final new trade in our Supervised Trading Programs and by October, 1969, had closed out all trading positions for our clients in the Programs. During this same period, I very cautiously implemented my initial minor trades for the Precious Metals Syndicate. None of the markets in which the Precious Metals Syndicate trades—silver, platinum, palladium—is subject to Federal or CEA regulations.

In October and November 1969, the ABT complex was launched operationally, and, gradually, my plans for promoting, advertising, developing and trading in the Precious Metals Syndicate gathered momentum and scope.

However, in February, 1970 we were notified of the CEA's initial complaint against us, and this served as an effective damper on my plans for the promotion of the Precious Metals Syndicate.

The stunning blow, however, occurred in June, 1970, when we received the amended and expanded CEA complaint, which contained figures from our financial records *that had been deliberately and surreptitiously falsified by a CEA auditor and had no relationship to our true financial standing.* As a matter of fact, the falsified figures in the expanded complaint showed a *totally untrue picture of our financial deterioration at the rate of $4,000.00 per month.*

In June, 1970, if I may point out to the Court, confidence in Wall Street firms was at an extremely low ebb. Brokerage firms had been failing, "backroom" confusions involving

customers' funds running into the millions were commonplace. The zeitgeist of the day was not conducive, to say the least, to investments offered to the public by a firm acting as broker and in a fiduciary capacity, when that firm was represented as suffering financial deterioration at the rate of $4,000.00 per month. The CEA made these falsified figures available to the press and the press carried the "story" nationally, promptly upon release of the amended complaint.

I soon became aware of the stunning impact that the CEA's "story" had upon the prospects and affairs of the Precious Metals Syndicate. Partnership redemptions were requested and many prospective partners informed me that "as soon as you get your legal problems settled with the Government, we will be glad to 'take another look at the Syndicate.'"

Nor could I easily convey my own side of the story of this disgraceful episode in the history of the administrative agencies of our country. I found when I attempted to reveal the true story of the CEA's criminal conspiracy against me, that people—friends and business acquaintances alike—quickly started to show embarrassment over a situation whereby they are asked to attempt to judge the validity of such an unthinkable charge. Such is the power of an agency to demolish a citizen's reputation by simply pointing a finger and stating "facts" and "conclusions" that were a sheer fabrication calculated to bludgeon Arthur N. Economou before he had an opportunity to upset the staid, rusty and detrimental concepts that were voted into our financial community 35 years ago.

Thus the Precious Metals Syndicate has come to a sad and abrupt halt in its development. No partnership units have been sold now for quite some time. I cannot undertake to try to explain "my trouble with the CEA" to prospective partners I am conditioned now to their embarrassment and their silences and I cannot go ahead with the Syndicate until I receive relief from the Court in the form of a temporary injunction, initially, and a permanent injunction, subsequently.

The Economou Grain Futures Trading Syndicate was organized as a New York State limited partnership in 1969 along the same conceptual and organizational lines as The Precious Metals Syndicate. Its objectives were to trade and invest in futures contracts of major grains—corn, wheat,

rye, oats—which are handled on a number of the nation's commodity exchanges registered under the Commodity Exchange Act, and are subject to regulation by the CEA.

The Grain Futures Syndicate's registration statement, encompassing 5,000 limited partnership units to be offered to the public at an initial price of $500.00 per partnership, for a total offering of $2,500,000, was filed with the U. S. Securities and Exchange Commission on September 30, 1969. At that point, my associates and I had worked for about two-and-a-half years to organize, develop and formulate the legal and operational structure of the two Syndicates in order to qualify the limited partnership units for registration with the U. S. Securities and Exchange Commission and to be in a position to be able to offer the partnership units, under the provisions of an effective registration statement, for sale to the public.

As with the Precious Metals Syndicate, I am the general and managing partner of the Grain Futures Syndicate, with a contractual arrangement whereby I receive a management fee of 8% annually of the overall average net asset value of the syndicate. In addition, ANE & Co. has also entered into an agreement to act as broker for the Grain Futures Syndicate in placing orders for execution on various grain exchanges. ANE & Co. has made further arrangements with other brokers in order to be compensated in form of a portion of the commisions generated by the Grain Futures Syndicate trading activities. This arrangement was similar to ANE & Co.'s brokerage arrangement with the Precious Metals Syndicate. Such brokerage, of course, was intended to provide still another source of badly needed income during the 1969-1971 transition period, as I phased out of my previous activities with the Supervised Trading Programs and into the activity of launching the ABT complex and managing the two Trading Syndicates.

In mid-March, 1970, we received the letter of comment from the U. S. Securities and Exchange Commission relative to the registration statement filing of the Grain Futures Trading Syndicate. Though the Precious Metals Syndicate partnership units had been cleared for sale to the public a year earlier, and the Grain Futures Syndicate was similar to that filing, the March, 1970, letter of comment outlined numerous changes that would be needed in the registration statement and the prospectus itself before the Grain Futures Syndicate could be declared effective by the SEC.

By mid-March, 1970, the U. S. Securities and Exchange Commission knew that the CEA had instituted its CEA Docket No. 167 against me and ANE & Co., and one of the requirements outlined in their letter of comment was that it would be necessary for me to include a statement in the Grain Futures Syndicate as to whether I had been subject to or involved in any proceeding by any regulatory or supervisory agency. This was the first time that the SEC had ever requested that we include such information, and I felt that it would seriously affect the sale of the partnership units. Nevertheless, the CEA had apparently made no general press release of the CEA initial complaint issued in February, 1970, and I felt that, since the CEA was at fault and that the complaint no doubt would be withdrawn in short order, that we should immediately proceed to implement the numerous changes that were required by the SEC letter of comment.

My associates and I worked diligently to structure and re-model the registration statement and the prospectus, as required by the SEC, and the work was almost completed, when we were bludgeoned unexpectedly by the expanded and amended CEA complaint in June, 1970. Then and there, our work stopped on the Grain Futures Syndicate, for the immediate public reaction to the CEA falsified amended complaint, showing that ANE & Co.'s financial position was eroding at the rate of $4,000.00 per month during the first quarter of 1970, was extremely negative, thus precluding any possibility of success with our planned offering of a total of $2,500,000 in partnership units for sale to the public.

As a denouement, we have just received word from the Washington office of the U. S. Securities and Exchange Commission relative to the status of our registration statement of the Grain Futures Syndicate, filed September 30, 1969. It has been declared "abandoned" by the SEC, for lack of follow-through action on my part.

• • •

"J"

"ANE & Co., Inc."

Arthur N. Economou & Co., Inc., of which I am the majority and controlling stockholder, is a Delaware Corporation and from 1960 through October, 1969 acted as broker for the Supervised Trading Programs. Together with my-

self it is a respondent named in the complaint and amended complaint issued in CEA Docket No. 167.

In addition to its brokerage activities, ANE & Co., Inc. also regularly published commodity market letters from approximately 1955 through to 1969. During the period 1965 through to the present, the company has provided office facilities, personnel, management and editorial services for The American Association of Commodity Traders.

Since the Supervised Trading Programs were discontinued in October, 1969, the company has employed its personnel, management and editorial services on behalf of The American Board of Trade, through The Economou Financial & Development Corp.

Brokerage derived from the trading activities of the Supervised Trading Programs provided the main source of revenue for ANE & Co., Inc. from 1960 through July, 1969. when the last commissionable trades were implemented for Supervised Trading Program clients.

In general, gross commissions which ANE & Co., Inc. derived from Program trading activity in both regulated and non-regulated accounts *per month* amounted from $6,000.00 to $12,000.00—which represented ANE & Co., Inc.'s share of the commission charged to customers, the other portion of the gross commission accruing to a clearing house member of one or more of the exchanges.

This $6,000.00 to $12,000.00 per month gross income from Program trading shriveled to zero starting August, 1969 when I discontinued the Programs. I was not concerned, however, for with the reputation I had established over the preceding 14 years, I know that I could quickly build up our income from the Precious Metals Syndicate and the Grain Futures Syndicate to the same level and even, in fact, far in excess of what I had accomplished in my peak periods previously.

However, such has not been the case. The Precious Metals Fund is dormant, with only moderate brokerage commissions accruing. On the other hand, the Grain Futures Syndicate never got off the ground. The framework is there, but its potential lies deeply asleep as long as the CEA is permitted to perpetuate criminal acts upon an innocent citizen and one of his companies.

• • •

"K"

Sequence of Events and Acts

Early in 1969, the CEA announced that the Commodity Exchange Act and the rules thereunder had been amended to provide for minimum financial requirements for commission merchants registered under the Act who carried the accounts of their customers on their own books. The applicable requirements for minimum financial requirements were set forth generally under Section 1.17 of the rules. On the other hand, if a commission merchant did not wish to carry the customers' accounts on his books—or if he could not meet the financial requirements under Section 1.17—he could function as a commission merchant under Section 1.31a, which had no minimum financial requirements. However, under Section 1.31a, his accounts would have to be transferred to and the bookkeeping and accounting for the customers handled by another commission merchant who qualified under Section 1.17 or was a member of a commodity exchange registered under the Commodity Exchange Act.

The rules and regulations under Section 1.17 are vague, abstruse and subject to diverse interpretations. In simple language, we just did not understand what the rules meant.

In February, 1969, I visited the New York regional office of the CEA to secure assistance in the interpretation of and clarification on the various sub-sections and sub-sub-sections of Section 1.17. Notwithstanding our general knowledgeability and background in matters of accounting, my associates, including a C.P.A., and myself, simply could not understand the various nuances of Section 1.17. Unfortunately, the problems of explaining or interpreting the vaguely and ambiguously written regulations were far too great for any part or all of the accounting staff of the CEA New York regional office, or, at least, they gave us to understand that they did not have the authority to make definitive interpretations of the new regulations. One by one, each of our questions was referred to Washington headquarters of the CEA, either on the spot by telephone or a promise made to let us know the answers "just as soon as we hear from Washington." Therefore, we left our "clarification" visit with the New York office little wiser than we had arrived.

The new rules under Section 1.17 were to become effective as of March 31, 1969, at which time commission merchants

were to file financial statements. In February and March there were numerous phone calls between the CEA New York staff and myself concerning the meaning of the various sub-sections under Section 1.17. At one specific time during these discussions, it was not clear in my mind whether we needed $10,000.00, the minimum financial requirement, or $100,000.00—*it all depended upon how some of the sub-sections of Section 1.17 were interpreted.* Very little help, however, was forthcoming from the CEA New York regional office to provide the concrete guidance we needed in order to correctly interpret Section 1.17 for the purpose of meeting the requirements.

By mid-March, 1969, with the deadline for our first statement filing approaching, it was necessary to "go it on our own"—to structure the various agreements and accounts on our books to meet with the requirements of the newly and amorphously written Section 1.17. It was my decision at that time to rely on our legal associates and our C.P.A. for meaningful interpretation of the various items and sub-sections of Section 1.17.

The New York office of the CEA was so advised. At that time, I was also careful to point out that we were eager to have final interpretative guidance and decisions from Washington and asked that they please let us know as soon as word had been received.

Our initial financial statement as of March 31, 1969, was prepared to the best of our ability and understanding and filed with the CEA. However, we informed the CEA that should any of the assets, or their documentation, which we had prepared to the best of our ability and understanding to meet the requirements of the new rules, be questioned, that ample constructive alternatives were available. I pointed out that naturally I did not wish to divert capital from the new enterprises that I was undertaking at that time and tie up the capital in an area which was being discontinued, but I explained that I would be willing to advance the cash, if necessary, rather than get involved in endless wrangles and haggles concerning the meanings of the various sub-sections of Section 1.17. One key asset on the books of ANE & Co., in the form of $9,000.00 owed to us by the American Association of Commodity Traders, secured by a substantial inventory of readily saleable back issues of the

"Commodity Journal," I offered to pay off personally, if it were questioned.

In addition, one other logical alternative would have solved the entire situation in one relatively simple step—for, since I had made the basic decision early in 1969 to phase out of the account management business, in the form of the Supervised Trading Programs, in order to concentrate on the development of The American Board of Trade, we could readily re-classify from Section 1.17 of the rules into Section 1.31a, which requires no minimum financial capital for an organization which does not carry the accounts of customers on its own books. This fact was also discussed with the CEA auditors as well as the New York regional administrator of the CEA.

In April, 1969, shortly after we had filed our first financial statement as of March 31, 1969, I also requested assistance and guidelines from the CEA with reference to the concepts and operational structure of the new ABT exchange complex. I first approached Mr. McMinn, regional administrator of the New York CEA office, and explained the general structure and expressed the desire to secure the views and suggestions of the CEA to serve as guidelines for the ABT's eventual registration under the Commodity Exchange Act. I explained the various new concepts that were involved in the ABT organizational structure and operational scope. Mr. McMinn offered no practical views or opinions, other than to suggest that I contact Mr. Robinson, director of compliance of the CEA Washington office.

I followed through on Mr. McMinn's suggestion and phoned Mr. Robinson in Washington. I went into considerable detail regarding my plans for the launching of the ABT exchange complex. However, Mr. Robinson represented a virtual wall of resistance, in that he made no suggestions whatsoever as to the procedures that could best be followed in organizing the ABT into final form to qualify for registration under the Commodity Exchange Act, and manifested overt hostility throughout the conversation.

I had no idea at the time that April, 1969, represented the specific juncture in time during which the decision was reached by CEA high officials—specifically, Caldwell, national administrator; McMinn, New York regional administrator, and Robinson, national compliance director—to im-

plement a conspiratorial plan of action to discredit me publicly and through such discrediting to deal the fledgling ABT complex, which was to be nurtured financially in its initial developmental stages by the sale of stock issues to the public, a mortal blow. As a "bonus" to the conspirators, the plan had additional values— a) I, too, would be effectively eliminated from the financial scene and my criticisms and protests of the basic dysfunctions of the exchange system would no longer serve to irritate the CEA hierarchy; b) my reputation and status as founder and president of The American Association of Commodity Traders would be discredited; and c) the Precious Metals Syndicate, launched just a few weeks previous, would be completely vitiated.

Based upon an inductive analysis of the various acts of the CEA and the sequence of events in CEA Docket No. 167, upon testimony given at the hearing, upon documents from the files of the CEA supplied to me upon request by the CEA, upon documentary evidence that has come into my possession over the past 23 months—I am prepared to prove beyond any reasonable doubt that the conspiracy grew "like Topsy," and eventually also encompassed and involved the office of the Secretary of Agriculture, an Assistant Secretary of Agriculture, a deputy director of the CEA, an attorney and a chief hearing examiner of the U. S. Department of Agriculture and three CEA auditors, in addition to the three originators of the conspiracy mentioned supra. The auditors were the "hatchet men" in the conspiracy, for their job was to plant and nurture the fabricated evidence against me or establish a "launching pad," which would be used in the conspiratorial monolithic assault that was carried on undercover from April through February, 1970, when the initial complaint was filed against me—and both covertly and overtly from February, 1970, through to the present time.

In a so-called "audit" of our books and records in April and May of 1969, following the filing of our initial financial statements, as of March 31, 1969, it is now apparent that the practical aspect of the conspiracy got underway and was implemented by Edward Fitzpatrick, CEA auditor. In the years we had been registered with the CEA, our books invariably were audited by CEA auditors working in teams of two men, with both men working together closely on a single, unified audit. After each audit, invariably and without exception, the two men would have an overview report for us in what was termed a post-audit interview, during which the findings of the auditors would be related to us verbally and suggestions offered for corrections of any discrepancies or errors on our books.

The CEA conspiracy, however, required a divergence from this established pattern. Though Mr. Fitzpatrick was accompanied by another CEA auditor, Mr. Jackson, who is not named in the instant action, the two auditors worked in two distinct areas of our accounting system and these two areas did not overlap. Specifically, Mr. Jackson occupied himself with a complete audit of the individual customer's accounts which we maintained on our books in our 5th floor quarters, while Mr. Fitzpatrick occupied himself primarily with the financial records of ANE & Co., in our 11th floor offices. Fitzpatrick also spent part of his time on the 5th floor working on a reconciliation of our customers' market positions as recorded on our books with those reported by our clearing house associates.

Subsequently, in July, 1969, Mr. Jackson visited me for a post-audit meeting with reference to the audit of the individual customers' accounts. *Significantly, Fitzpatrick did not visit me for a post-audit meeting with reference to his audit of the general financial standing of ANE & Co., as of March 31, 1969.*

It was during the April/May, 1969, "audit" conducted by Fitzpatrick, that the groundwork was laid by the CEA for the manufactured charges that we were "underfinanced," which formed the base for the complaint issued in February, 1970.

During this "audit," as I testified at the hearing, both I and Mrs. Economou, who is an officer in ANE & Co., Inc., found Fitzpatrick extraordinarily difficult to talk with and extremely rude and overbearing in his attitude toward me and Mrs. Economou. His rude and insulting attitude was consistent throughout a variety of meetings with Mrs. Economou and myself separately, as I maintain my office on the 11th floor and Mrs. Economou is located on the 5th floor. This was completely at variance with our past experience of unfailing and unvarying courtesy on the part of all CEA auditors with whom we had come in contact over the years.

We did not know then, of course, that Fitzpatrick was

setting in motion the initial but vital step in the subsequent allegations and complaint that our assets did not meet the requirements of the new Section 1.17. Every document that I showed him met with disapproval and was brusquely and rudely declared unsatisfactory; every suggestion that I offered as an alternative was similarly treated with disdain and ridicule. At the same time, it was apparent to me that Fitzpatrick's meager background in accounting and complete lack of background in law completely disqualified him as an intelligent judge of proper legal documentation and many of his comments were totally inappropriate and invalid.

I hereby state and allege that Edward Fitzpatrick was sent in by the CEA to conduct the aforementioned "audit" for the specific purpose of "discovering" that the assets were not documented in a manner as to meet the requirements of Section 1.17. I hereby state that the "invalidity" of said documentation was not based on fact but on a predetermined plan to disallow our assets on the basis of the so-called Fitzpatrick "audit," regardless of the basic truth.

Fitzpatrick's manner and method of conducting the "audit" was so overbearing and obnoxious that in one instance I telephoned the CEA New York Regional Administrator to complain of his conduct; in another instance, I was so upset that I ordered him out of my office. As I mentioned previously, this was a most extraordinary departure from the polite and pleasant attitude of CEA auditors that we had encountered over the years and had come to consider CEA "policy."

At this point in this Section of this affidavit, I respectfully call to the attention of the Court several pertinent aspects of the so-called "audit" which was conducted by Fitzpatrick, as follows:

1) The CEA has not alleged at any time that the assets on our books did not exist. Such assets were later disallowed in the complaint because they were allegedly not properly documented or did not meet the requirements of the amorphous Section 1.17 of the new rules, based on what Mr. Fitzpatrick "found" in his audit and based on how he chose to interpret the various sub-sections of Sec. 1.17.

2) That in view of the controversy arising from Fitzpatrick's inexpert appraisal and evaluation of the validity of our documentation and his outrageously rude manner of

conveying his opinions, this grotesque confrontation ended on the note that the entire matter would be referred to Washington for decision and that we would be told if either the assets or documentation thereof were not acceptable. As we heard nothing further, we rightfully assumed that it had been decided by Fitzpatrick's superiors that all was in order and we proceeded on that assumption.

3) Subsequent to the Fitzpatrick "audit," the CEA alleges, a "determination" was made that the assets in question did not meet the requirements of Section 1.17. However, we were not told about either the "determination" made by the CEA, or Mr. Fitzpatrick's "findings" upon which the "determination" was based, until the complaint was issued in February, 1970.

As set forth above, at the time of the Fitzpatrick "audit" I was not told that the assets were invalid; it was only a question primarily of whether the assets were properly documented. In view of the conspiratorial nature of the Fitzpatrick "audit" in April/May of 1969, it is now clear that his part in the conspiracy was to assert that the documentation of the assets, "in his opinion" did not meet the requirements of Section 1.17. I hereby state that irrespective of what I showed him or could have shown him, the documentation would still not "meet the requirements of Sec. 1.17." Thus the groundwork was cleverly laid for the later surreptitious disallowing of assets based on "improper documentation."

The fact that I repeatedly told Mr. Fitzpatrick during his April/May, 1969 "audit" that there need be no concern on anyone's part if the assets did not qualify, for there were several constructive alternative procedures—such as my paying off the AACT indebtedness to our company, or simply reclassifying into Section 1.31a which has no financial requirements, in view of the fact that I was phasing completely out of the business of individual account management—was entirely disregarded by the CEA.

During those many unpleasant wrangles with Fitzpatrick, I repeatedly stated, "For heaven's sake, just tell me what you want me to do and I'll do it!" However, such pleas on my part were disregarded by both Fitzpatrick and the CEA hierarchy, all of whom gave the vapid impression that they had no idea what I should do in order to be assured of acceptably meeting the requirements of the new rules.

This vagueness is now, in retrospect, completely understandable because, if the conspiracy were to succeed, it was essential that I be prevented from following any course of procedure that would serve to extricate me from the tightening jaws of the trap that the CEA was closing around me and the organizations I had created.

To add to the effectiveness of the trap, a seemingly innocuous ploy was implemented—in the form of an omission. Specifically, Fitzpatrick *omitted his post-audit report to or meeting with me.* As mentioned previously, Mr. Jackson called on me and, as he testified at the hearing, presented his post-audit report to me in about July, 1969, relative to the individual customers' accounts on our books.

Fitzpatrick, however, had obviously been instructed not to afford me the customary post-audit report or meeting, as I certainly would have pressed for the answers to the various questions which had been "referred to Washington."

Thus the initial stages of the conspiratorial CEA acts were set up—for the purpose of publicly discrediting me and my affiliated organizations. Specifically, on the one hand, Fitzpatrick had laid the groundwork for saying, whenever he was called upon subsequently to do so, that what he "found" in his audit did not meet the requirements of Section 1.17, and on the other hand, I was effectively blocked from supplying any easily-applied remedial measure by being trapped, in the absence of any notice, warning, or post-audit meeting, into believing that the CEA found our assets and the documentation of the assets perfectly satisfactory.

In July of 1969, I made the last new trade for our customers in our Supervised Trading Programs. I have made no new trades for customers since then in the Programs, nor have I derived any commission income from such customers since July of 1969. We subsequently began a systematic course of auditing and verifying each of the hundreds of accounts and refunding all credit balances. This was completed and all customers' accounts refunded and closed by April 24, 1970.

Through February, 1970, when the CEA issued its first version of its complaint against us, we heard nothing whatsoever from them concerning either our financial statement or what decisions pertaining to it had been made. Meantime, we submitted our financial report as of June 30, 1969 and

prepared our December 31, 1969 report for submission to the CEA—completely and utterly oblivious of the fact that the CEA officials and personnel had made the decision to "get Economou," and were to implement the decision in the form of an organized conspiracy.

In November of 1969, the ABT complex became operational in a modest fashion, and the CEA at that time requested that we supply them, for their general information, all printed material and data pertaining to the ABT. This material was promptly supplied, in duplicate, to the New York office of the CEA, attention of Mr. Coopersmith, assistant regional director.

Unknown to us, however, the CEA conspiracy at that time had extended to a surreptitious defamation and discrediting campaign against me directed to the attention of the U. S. Securities and Exchange Commission. I hereby allege, based on knowledge and belief and upon documentary evidence that has come into my possession, that the CEA, in late 1969 and early 1970, conveyed distorted, fabricated and completely misleading information to the SEC for the specific purpose of convincing the SEC that the Precious Metals Syndicate was an illegal enterprise and that, furthermore, the CEA made deliberate efforts to induce the SEC to undertake injunctive proceedings against the Precious Metals Syndicate. The paradox and the anomaly here is that the SEC had made the Precious Metals Syndicate registration effective as of March, 1969—only to find itself influenced by its junior counterpart in Washington to initiate injunctive proceedings against an Economou innovative concept that both the SEC and the CEA had conceptually approved in 1967 and 1968. I hereby state that the warped misinformation supplied by the CEA to the SEC relative to the Precious Metals Syndicate in November, 1969 through January, 1970 is not only a violation of my rights as a citizen, but indicative of the criminal nature of the CEA conspiracy against me.

As already mentioned, we were served with the initial complaint in February, 1970, in which the CEA alleged that we had violated the Act and Section 1.17 of the regulations. Specifically, the CEA had disallowed current assets as listed in our financial reports submitted as of March 31, 1969 and June 30, 1969, in the total amount of approximately $18,000 and $19,000, for the two dates, respectively, and charged

that we lacked $6,000 as of March 31, 1969 and $700 as of June 30, 1969, of having enough funds to meet minimum financial requirements, after said disallowance of assets.

Meantime, throughout the entire period through February, 1970, we had never been advised that these substantial items did not, in the opinion of the CEA, qualify as current assets, not to mention being advised that we would be in "willfull" violation of the Commodity Exchange Act and the CEA regulations if we listed them as current assets.

I acted promptly on receiving the initial February complaint—which I then believed to be based on simple misunderstanding. *First, I asked for instructions from the New York CEA regional office on how to proceed in reclassifying from Section 1.17 into Section 1.31a,* which requires no minimum financial requirements, inasmuch as the rules and regulations of the CEA *nowhere spelled out this basic reclassification procedure.* Next, I pointed out that, as the CEA knew, the last new trade for customers had been put on as of July, 1969, and that all customers' margin balances were being systematically refunded in this phasing out process. I then requested a meeting with the national CEA administrator in Washington for the purpose of bringing all the facts to his attention.

At the Washington meeting, which was held April 1, 1970, I mentioned to the national CEA administrator that I had asked the New York CEA office for instructions in reclassifying into 1.31a, inasmuch as we had closed out all remaining market positions for customers in October, 1969, and were in the process of gradually phasing out of the managed commodity account busir s by refunding all margin balances.

At that same Washington meeting, in which five CEA officials and the national CEA administrator participated, I briefly reviewed the activities of The American Board of Trade, and I told the meeting that, as they knew, we planned to eventually apply for registration as an exchange under the Commodity Exchange Act, and that I felt, sincerely, that this was one organization that could lead the way to solving some of the problems of misalignments and dysfunctions that traditionally beset the commodity field.

I was shocked and stunned at that same meeting to hear The American Board of Trade referred to as a "bucket shop" several times by Mr. Robinson, CEA compliance

director, and by the CEA national administrator. To me, this was a shocking revelation, for the CEA had been supplied full data pertaining to the ABT and its operational concepts had been explained in detail to McMinn and Robinson as early as April, 1969. Its concepts, to be sure, were unique, innovative and perhaps somewhat radical to the traditional-minded CEA, but the ABT's operational plans and objectives, as fully explained in our literature, as well as the unusually high proportion of actual deliveries being made against ABT customers' market positions, when compared to other exchanges, were in such direct contradiction to any possible definition of a "bucket shop" that I was completely taken aback and at a loss to understand the slur.

I hereby allege that by referring to the ABT as a "bucket shop" in front of five CEA officials, the "undercover" phase of the anti-ABT campaign was being implemented, for this poison was intended to and would inevitably "leak"—and it did succeed in reaching various segments of the financial community. Specifically, administrative personnel of the New York Stock Exchange, who had evinced interest in buying memberships on the ABT, were told by a member of one of the major commodity exchanges that the ABT was an organized "bucket shop"; and also, a member of the Winnipeg Grain Exchange was told by one of his customers that he, the customer, had heard that the ABT was a "bucket shop."

I hereby state that the continuous reference by CEA officials to the ABT as a "bucket shop" in group meetings that were held in the national administrator's office in April, 1970, in July, 1970, with eight or ten present, and a smaller meeting in December, 1970, represented one of the insidious devices employed by the CEA hierarchy to discredit a new and innovative exchange complex, and in employing such pernicious methods of defamation, the CEA officials have acted in a criminal manner.

Around the first week in April, 1970, we heard from the CEA regional office with regard to the procedure required to reclassify into 1.31a. All we had to do, they said, was simply refund any credit balances and close out our customers' accounts. This we did, with all regulated accounts cleared from our books by April 24, 1970.

My associates and I worked diligently to structure a comprehensive Answer to the complaint, and this was filed with

the CEA as of April 24, 1970. In our Answer, we requested a Hearing in order to show conclusively why the complaint should be dismissed.

Our request for a Hearing to this initial complaint was not granted, nor was any further reference made to the request in our subsequent contacts with the CEA.

I had hoped, meantime, that the strength of our Answer had induced a change of plans on the part of the CEA, and that finally they had switched to a proper overall perspective of what was involved. My hopes, however, were in vain. I did not realize at the time that I had been enmeshed within a CEA onslaught and conspiracy and that it would require practically super-human stamina and energy to withstand it and survive.

Apparently, what the Answer had actually induced was a realization that the CEA needed a much stronger case, reinforced with additional "evidence" of "willfull" violation of the Commodity Exchange Act and the regulations of the CEA, combined, where possible, with the power of selective release of information to the public and interested individuals. It must have been disappointing to the CEA that the original complaint received no mention in the financial press and some new angle was needed which would be irresistible bait for the press. Meanwhile, they obviously became aware that the SEC intended to approve our stock offering for the purpose of obtaining "seed money" for the ABT complex.

In furtherance and reinforcement of their evil objectives, the CEA now swung into sustained activity. We were subject to a new audit, ostensibly for the purpose of clearing the deck for reclassification from Section 1.17 into Section 1.31a, which we had long pleaded for. I should like to mention at this point the important fact that nowhere in the rules and regulations of the CEA is there a procedure outlined that points out the steps that need to be taken, should a registrant desire to reclassify from Section 1.17 to 1.31a, or vice versa.

The new audit which took place early in April and was completed by mid-April also represented a deviation from the norm. As mentioned earlier, all previous audits had been conducted by a two-man team. However, this new audit was undertaken by a Mr. Chadonic, a then CEA auditor, who is not named as a defendant in the instant action. The

unusual aspect of Mr. Chadonic's audit was not only that he was by himself but also the obvious eagerness which he manifested in attempting to construe a misplaced figure in our books, for example, as a "violation of the rules."

One occasion in particular stands out in Mrs. Economou's memory. She and Mr. Chadonic were searching for a discrepancy on our daily segregation sheet and discovered that on a particular day a figure had been posted in the wrong column. On the very face of it, replacement of this figure in the proper column did not alter the fact that we were amply oversegregated on that day, yet Mr. Chadonic was obviously blinded to this elementary truth by the excitement of discovering a "violation," because he kept exclaiming and pointing—"You were undersegregated that day! You were undersegregated that day!" Mrs. Economou tried to penetrate his state of excitement by pointing out that the adjustment just made could not possibly result in undersegregation, but made no impression at all. Mr. Chadonic was standing in front of an adding machine, and in such a situation, the normal reflex action of any accountant would be to add up the 7 or 8 columns of figures involved in order to prove his accusation. However, so great was Mr. Chadonic's agitation, that it was finally necessary for Mrs. Economou to firmly shove Mr. Chadonic aside and add up the figures herself while Mr. Chadonic continued to insist, "You were undersegregated that day." He was greatly chagrined when her adding machine tape proved the contrary and she later commented to me on his extraordinarily odd behavior. At the time, of course, we had no slightest suspicion that Mr. Chadonic was acting under orders to scrutinize our books very closely on the theory that probabilities would dictate that "something" could be found that could be interpreted as a "violation of the rules."

There were three additional aspects of the Chadonic audit which appear as most unusual and sustain the conspiratorial pattern that now has clearly emerged from the collective acts of the CEA officials and personnel since approximately April, 1969 onward. One of these is the fact that on completing his audit about mid-April, 1970, Chadonic did not meet with me in order to give me the customary post-audit report. Secondly, was his unusual behavior with regard to a trial balance which he had specifically asked our C.P.A. to prepare for him, as of February 28, 1970. At the time, our

C.P.A. was fully occupied with the tax season duties, but promised that he would have the trial balance ready by late April or early May. Mr. Chadonic said that he would return for it then. However, Chadonic never did return to pick up the trial balance that he had requested.

The third unusual aspect of the Chadonic interlude is so decidedly "queer" as to inject an element of mystery into the picture and cast a heavy cloud of doubt on Chadonic's veracity under oath. When asked on direct examination at the hearing why he had not returned for the trial balance our C.P.A. was holding for him at his request, he stated that he *had* returned, unbeknownst to either Mrs. Economou or myself, and consulted with another of our accountants, who is no longer in our employ or in the New York area. He testified that this accountant gave him the data he needed. However, we cannot give credence to this "tall tale" because, 1) this particular accountant had never worked in that area of our operation and was totally unfamiliar with it, 2) he did not have access to those particular books and records, 3) he would beyond any doubt have told us immediately had he been approached for information by Mr. Chadonic and 4) no one else at our office saw Mr. Chadonic from the day he left in April promising to return for the trial balance. Above all, it is beyond belief that even under the conspiratorial circumstances outlined, that a CEA employee would actually make such a surreptitious visit to a business office and neither of the principals in the business—or anyone else on the premises—learn about it until months later. It may have been a spur-of-the-moment means of rationalizing not having returned for the trial balance he requested, but at the very least, reflects serious discredit on an agency which would admit to employing such devious tactics.

During the Chadonic audit, he had mentioned that his audit represented the regular annual audit of the CEA. With that in mind, we were surprised in late April or early May by the arrival of still another CEA auditor, one Clement Gross, who informed us that he had instructions to do an audit. When we expressed surprise and told Gross that the regular annual audit had been completed just a couple of weeks before by Mr. Chadonic, with the exception of the February 28, 1970 trial balance he planned to return for, Gross said he didn't know about that, that he hadn't been

tied in on any previous audit but had just been told to come in and do an audit.

When we offered Gross the February 28 trial balance being held by our C.P.A. for Chadonic, he refused it, saying that it was not needed as he would require a trial balance as of the end of March. We told him that our C.P.A. was due in on the following day and would be glad to work with him on the March trial balance, but he refused this too, saying that he would prepare his own trial balance from our books "without bothering our C.P.A." We naively took this extraordinary procedure at face value and made our books available to Gross.

Gross completed his duties with remarkable speed—and at the hearing testified that he had been sent in to do a "quick examination" of our books and not a regular audit, in contradiction of what he had told us on his arrival—and without discussion or consultation with our C.P.A. or myself. It was during the course of preparing his personal "trial balance" that Gross falsified a valid reserve account into an account payable resulting in a completely untrue appearance of financial deterioration in my company at the rate of $4,000.00 per month for the first quarter of 1970, whereas, in fact, our financial standing showed no appreciable change for the quarter. It was this picture of financial deterioration manufactured by the CEA auditor, Clement Gross, which was incorporated subsequently into an expanded and amended complaint and released to the national financial press, credit agencies, the investing public and other interested persons.

I hereby state that the act of Clement Gross in distorting and falsifying our financial records is a criminal act and part of a criminal conspiracy knowingly and deliberately implemented by CEA officials and personnel for an evil purpose, which has caused great and irreparable damage to me and my companies.

I again implore the Court to intervene at this juncture of the CEA Docket No. 167 to protect me from such illegal acts on the part of this governmental agency bent on my destruction.

Following the refunding of all remaining customers' balances on our books as of April 24, 1970, we heard nothing further from the CEA concerning our reclassification from Section 1.17 to Section 1.31a. We had followed their specific instructions by refunding all customers' balances—but still

no word regarding the requested change in our status. I paid little attention to the matter as there appeared to be no urgency as the CEA knew that we were completely out of that aspect of our business and I was unaware that it was a vital part of the CEA conspiracy to keep us entrapped under Section 1.17.

About May, 1970, still another incident occurred which I considered very unusual but did not see the conspiratorial aspects or significance until this past year, when the entire spectrum of CEA acts fell into a pattern of an evil conspiracy that can be conclusively proved in a Court of law.

The incident revolves around the one and only serious complaint that the CEA ever received from a customer concerning the manner in which we handled his account. This customer lived abroad. In his letter of instructions to us relative to the closing out of his account, his grammatical structure and syntax was such as to render the instructions subject to varying interpretations, and we followed them to the best of our understanding by closing out his positions gradually rather than performing a simple "at-the-market" over-all close out. Specifically, he asked us to close out his positions "at the best time: the CEA later insisted that he should have been completely closed out on the spot.

Because of the manner and method used in closing out the account, as we understood the instructions, a loss developed in the account. The customer claimed that the loss sustained after we had received his instructions was $800.00; we claimed that, even if we were wrong, which was debatable, that the loss was only $400.00 and that claiming an $800.00 loss was a misunderstanding on his part.

He reported the matter to the CEA and around May, 1970, we were asked for our side of the story by Mr. Wolkis, then Chief Auditor, CEA New York Regional office. Wolkis, on the phone, immediately took the part of the customer in insisting that we owed the customer $800.00. I, quite as adamantly, insisted that if we owed the customer anything at all, it was $400.00, not $800.00.

Wolkis, pressing me to settle for the $800.00, finally blurted out that unless I settled for the full $800.00, *the CEA would institute fraud charges against me.*

I reported this extraordinary incident to the CEA national administrator in the presence of a number of his

associates at a meeting in his office in July, 1970, and I protested that this type of threat was uncalled for in view of my exemplary business record and of the fact that the issues involved were such that some reasonable compromise or adjustment could be employed to settle them.

I submit to the Court that this is just another example of the "ever-watchful for an opportunity to 'hit' Economou" attitude which the CEA had adopted as official policy starting in April, 1969, carrying through, in fact, to this very day.

After the CEA had closely audited the customer's account on our books, reverting to normal procedure by sending in a pair of auditors, instead of the "loner" technique employed in the auditing procedures involved in the "railroading" conspiracy, as exemplified by the Fitzpatrick, Gross and Chadonic "audits," and after considerable discussion with us and an explanatory letter from us, all concerned at the CEA finally admitted that we owed the customer only $400.00, not $800.00, as claimed by the customer and previously demanded by the CEA.

Unknown to us, from May through about mid-June 1970, my personal reputation was being maligned, and the reputations of The American Board of Trade and The Economou Financial and Development Corp. were being severely damaged through the action of the CEA in releasing controlled information in such a manner as to reflect adversely on me personally and the two organizations.

Specifically, it was brought to my attention that persons who made character inquiries to the CEA concerning The American Board of Trade were being supplied with copies of the February, 1970 complaint against me and Arthur N. Economou & Co., Inc. without mention of the fact that our answer to that complaint, in which we vigorously denied the allegations, and set forth the nature of our defense, was also on file with the CEA and that we had requested a hearing.

Specifically, it was also brought to my attention that a nationally-known credit agency, Dun and Bradstreet, had received copies of the complaint, and that copies of the complaint were a part of the credit information file that the agency had set up on The American Board of Trade and The Economou Financial & Development Corp. and that there was no mention whatever in said files that our Answer,

containing our denial and the nature of our defense, was also a matter of public record, or of the fact that we had requested a hearing in order to prove our innocence.

Once this procedure was called to my attention, I promptly telephoned McMinn, regional administrator of the New York CEA office, to protest this type of extremely damaging one-sided dissemination of information pertaining to The Economou Financial & Development Corp. and the ABT. The $300,000.00 stock issue, made effective on May 26, 1970 by the SEC, and which we had just started to advertise and promote to thousands of prospective investors who had expressed interest in participating in the financing of the new exchange and marketplace, would be seriously affected, I protested. Hundreds of investors contacting Dun and Bradstreet for credit information were being supplied with a copy of the complaint that somehow had lodged itself as an exhibit in the Dun and Bradstreet files of both The American Board of Trade and The Economou Financial & Development Corp., and without a hint that our side of the story was clearly on the public record, or that there even *was* another side to this story. McMinn's answer was that ". . . nothing can be done about it. That is our standard procedure."

I respectfully submit to the Court that such "standard procedure" may well be a violation of a citizen's Constitutional rights—in that poisonous information can be selectively injected into the commercial bloodstream of our nation, without the victim's knowledge and without a whiff of a chance on the victim's part to neutralize the pervasive and pernicious effect of such "standard procedure."

What we had not expected at all, especially after we had requested a hearing following the issuance of the initial complaint—the hearing which was not granted us—was the issuance of the expanded and amended complaint which struck at us out of the blue in June, 1970, coinciding with our announcement early in June of the stock issue in the amount of $300,000.00 offered for sale to the public by The Economou Financial & Development Corp. proceeds from the stock issue were to be used as "seed money" to launch the ABT complex.

The CEA thus effectively screwed down the lid on any possibility of success with the stock issue by means of the

expanded and amended complaint, issued June 22, 1970. The amended complaint incorporated the handiwork of the Gross falsification of our financial figures and was released to the national financial press to show the whole wide world not only that we were facing a charge of being underfinanced, but also that our financial position was deteriorating at the rate of $4,000.00 per month—both allegations CEA-manufactured and false.

May I ask the Court's forebearance at this point to interpolate that the investment public and the investment community *generally accepts as completely true* any formal, serious charge by a regulatory agency against a person or firm in that particular activity pattern.

In CEA Docket No. 167, however, the entire complaint, the allegations, the "facts," constituted a complete fabrication. The CEA contrived to manufacture the entire case against me by the expediencies of illegal, unethical and highly repugnant measures that included complete abrogation of the due process of law to which I am entitled under the Constitution.

May I also point out that we were not making use of nor desired to any longer make use of the "privileges" that are implicit in the Commodity Exchange Act, as the Commodity Exchange Act is being administered by the present CEA hierarchy. We no longer required the "privilege" of doing business under CEA rules—when such a "privilege" had been costing our customers $7,000.00 an hour for the use of the services that exchanges under CEA sponsorship offered. On the contrary, we no longer wanted any part of such "privileges." As previously explained, the CEA knew that we had started withdrawing from the business in July, 1969, when I made my last new commitment for clients under the "privileged sponsorship" of the CEA and closed out my final commitment for such clients in October, 1969.

Mention of Section 6(b) of the CEA rules in their expanded, amended complaint implied that I had filed false financial information with them. This might make sense of a sort had I been attempting to *retain* my commission merchant "privileges" under Section 1.17. But it makes no sense at all, under the circumstances, where I had made it clear and unmistakable that I was interested *only in my release* from their jurisdiction under Section 1.17, and had

been pleading with them for reclassification instructions. What would be my purpose in filing false financial information with the CEA?

The CEA news release pertaining to the amended complaint, as published on June 30, 1970 in the Wall Street Journal with a national circulation of about 1,400,000, stated in part: . . . "Commodity Exchange Authority alleged that the firm and Mr. Economou together were $13,000 below the minimum level for current assets as of December 31, 1969 and that the deficiency had grown to nearly $25,000 three months later." (underlining supplied.)

In truth and in fact our financial condition as of December 31, 1969 and as of March 31, 1970 were *practically identical.* For the CEA to publicly issue figures in the amended complaint to show that our financial position was deteriorating at the rate of $4,000.00 per month was a criminal act on the part of the CEA.

I hereby state that the aforementioned CEA allegations contained in the amended complaint and based on figures which Clement Gross, the CEA auditor, with the approval of CEA officials, deliberately and surreptitiously falsified and distorted in pursuit of a vile and evil purpose, is a violation of my Constitutional rights.

The damage caused by this criminal act to me personally and to the organizations which I have created and nurtured to life these past years, was substantial. The general description of said damage and the enormous physical and nervous strain that I personally, and my wife, have borne in CEA Docket No. 167, is set forth under Section "Q"—"Substantial Damage Inflicted Upon Me by the CEA"—in this affidavit.

Meantime, we had received no further word from the CEA as to the status of our re-classification from Section 1.17 into Section 1.31a, which requires no minimum financial requirements. As of April 24, 1970, we had closed out the remaining few accounts on our books and had completed refunding the credit balances to the customers involved. These were the instructions we had received from the CEA early in April and with which we had complied.

Finally, in August, 1970, in desparation, we petitioned the Secretary of Agriculture for our rightful freedom. This brought prompt action and our re-classification into Sec. 1.31a was accepted retroactively to April 24, 1970.

I should like to respectfully call to the Court's attention an interesting sub-section of Section 1.17 of the CEA regulations pertaining to the financial requirements of applicants under Section 1.31a which may be worthy of the Court's own view and interpretation, as it may apply to the issues of law which are interwoven throughout Section 1.17.

Specifically, Rule under Section 1.17(c) reads as follows:

> "(c) The minimum financial requirements prescribed in these regulations shall not be applicable to any applicant for registration as futures commission merchant to operate only in accordance with the provisions of Section 1.31a of these regulations, or to any registrant who in accordance with his application for registration is authorized to operate only in accordance with that section and who in fact at all times so operates." (underlining supplied)

The point of law that may be involved is whether, in the absence of specific guidelines in the rules as to procedure in re-classifying from Section 1.17 into 1.31a, can our request in February, 1970, made promptly upon receiving notice of the initial complaint, for re-classification instructions—can that request in itself be considered as "an application . . . to operate under Section 1.31a . . ."?? Can it be said, from the standpoint of legal interpretation, that we were indeed "applicants" for registration under Section 1.31a as of February, 1970, and that, in line with Section 1.17(c), we would accordingly be exempt from the minimum financial requirements of Section 1.17?

The possibility of such a reasonable application of Rule 1.17(c) escaped me from June 22, 1970, when the amended complaint was issued, up until recently. It probably did not escape the CEA hierarchy and their legal advisors.

Should the Court concur with the aforesaid possible application of Rule 1.17(c), then we should have been re-classified into Section 1.31a as of February, 1970, thus rendering the expanded complaint under CEA Docket No. 167 into a brand-new low in administrative agency infamy.

In our August, 1970 petition to the Secretary of Agriculture for re-classification, we also requested relief from the most damaging practice that the CEA was engaged in, and has engaged in continuously, and that is to mail and distribute copies of the complaint to all persons and organiza-

tions that inquired about my closely-linked affiliated organizations, without also making some effort at least to indicate that I, too, had a story on the record. We asked that the Secretary instruct the CEA hierarchy to supply copies of our Answer to the amended complaint, as well.

This p[illegible]tion was brusquely turned down by Richard Lyng, the Assistant Secretary of Agriculture, on behalf of the Secretary. "That's the way we do things . . . and that's the way we are going to keep on doing them," in effect, was his reply.

I filed an Answer to the amended complaint in mid-July, 1970. It consisted of 16 pages, including a 10-page single-spaced affidavit, in which I called the issues exactly as I saw them—a concerted plan on the part of the CEA to discredit me and the ABT, involving many of my basic rights.

As part of the affidavit, I included a background of my experience in the field and of the relatively impeccable reputation that I had built up over the years in a field in which a plethora of major and minor violations of the law occur and in which law suits are a daily way of life.

The entire affidavit in our Answer has been ignored by the CEA in CEA Docket No. 167. It formed one of the pillars in my defense, but a part of the pillar did manage to surface briefly at the hearing held in August, 1970. At the hearing, Richard Davis, the CEA prosecutor, specifically and clearly stated that the government was not contesting in any way the background material that I had set forth in the affidavit.

Yet, subsequent to the hearing, both Davis and the hearing referee, in the former's brief and in the latter's so-called "report," swept aside this portion of my defense and replaced it with a version more suitable to the attainment of character assassination. Davis' brief and the "referee's report," referred to me in identical words, since the referee's report was an exact photo-copy of Davis' brief, as "a shoe-string operation which is exactly the sort of thing Congress had in mind when it enacted financial requirements . . . most likely to dip into customers' funds or resort to sharp trading practices to bolster their money needs" . . .

This is but another example of the duplicity involved in the acts of the CEA in CEA Docket No. 167. In this case, they first lull me into believing at the hearing that my exemplary record in the field would be allowed to stand as

a pillar in my defense. Subsequently, in order to achieve their vile objectives, the pillar was brushed out of practical vision on the record—and replaced with a vicious, unwarranted and incongruous attack on my character.

On July 16, 1970, I personally filed our answer to the amended complaint with the hearing clerk in Washington and, while in Washington, I made an appointment to see the CEA national administrator at 2 P.M. and Richard E. Lyng, Assistant Secretary of Agriculture, at 4 P.M.

At the 2 P.M. meeting in the national administrator's office, which was attended by 8 or 10 members of the CEA hierarchy, including Mr. Robinson, Mr. Kirchhoff, Dr. Swantz, Mr. Williams, Mr. Davis, Mr. O'Brien and others, I told the national administrator that, in view of the maliciousness and the falsifications of facts and figures in the CEA amended complaint, I no longer intended to make any attempt to structure a line of communication with his office with reference to our plans to register The American Board of Trade under the Commodity Exchange Act, and that henceforth I was simply going over his head and make contact with the Assistant Secretary, Richard E. Lyng, the CEA national administrator's immediate superior. Furthermore, I stated frankly that we appeared miles apart in our conceptual thinking, as regards new and innovative operational approaches in the area of exchange functions and mechanisms of the futures commodity community.

At that same meeting, I related the incident that had occurred whereby Mr. Wolkis of the CEA New York office had threatened me with the institution of fraud proceedings unless we acquiesced to our foreign-land customer's unjustified insistence that we pay him $800.00.

During that same meeting, Robinson, deputy director for compliance for the CEA, again referred to The American Board of Trade as a "bucket shop,"—evidencing an uncalled-for hostility, that was also expressed explicitly by the CEA national administrator.

The four o'clock meeting with assistant secretary, Richard E. Lyng, was delayed until about 4:30 P.M., and I spent only 5 or 7 minutes with Mr. Lyng. I told him that I found it impossible to structure even a rudimentary line of communication with the CEA national office, as regards the ABT, for all I encountered at that level was hostility and determined resistance to any attempts on my part to

establish some form of two-way dialectic, in order to get on with the business of introducing a new exchange complex into the financial community. I called to Mr. Lyng's attention that the introduction of a specialist concept was paramount in our exchange structure and that help would be needed from the Secretary's office in establishing rules that would enable the specialist function to perform within the framework of the Commodity Exchange Act in its present form.

Mr. Lyng assured me that I did the right thing in going directly to him for a preliminary talk, in view of the apparent roadblocks that I was encountering at the national administrator's level. Furthermore, Mr. Lyng specifically agreed that the specialist function could readily be incorporated into an exchange operation. He pointed out that, in the securities field, there are many ways to establish a market price for securities—all sound and legal under our securities laws.

I was pleased to note such an apparent receptivity to at least one of the basic innovative areas of the ABT, and I told Mr. Lyng that I would be in touch with him in order to open up the way for eventual meaningful talks regarding The ABT's registration under the Commodity Exchange Act.

Within a few days after this talk with Mr. Lyng, I wrote to him to thank him for the consideration expressed for me and the ABT.

The hearing in CEA Docket No. 167 was held August 5, 6, 7 and 10, 1970 and is described in some detail under Section "L"—"The Mock Hearing"—of this affidavit. It was conducted in a totally unfair and discriminatory manner by Jack Bain, the chief hearing examiner of the U. S. Department of Agriculture. I appeared pro se, and with the exception of one afternoon when Mrs. Economou was with me and one forenoon when Mr. Radcliffe, our C. P. A., testified, I was the only person in the hearing room other than the CEA prosecution staff, CEA personnel, the referee and the Court reporter.

The duplicity, the illegality, the sham nature of the entire proceeding, will be brought out at the appropriate time in the instant action and can be readily proved in a Court of law. It was a two-way cooperative effort on the part of Bain, the referee, and Davis, the CEA prosecution attorney.

The objective was not to conduct a hearing to ascertain the facts, but to engineer the affair so that most of the very substance of my defense was blocked from appearing on the record and the CEA could expeditiously and legally find me guilty as charged.

Several basic approaches were employed, either deliberately, or on an ad hoc basis, to wind up the hearing as quickly as possible. The first of these was to get me to walk out on the whole CEA prosecution gang, which numbered 10 to 14 the first two days, but dwindled to 8 to 10 members on the last day-and-a-half of the hearing. The referee was particularly offensive. He kept shouting at me, kept shaking his finger at me, and at one point, rose to his full height, pointed his finger at me and screamed "Shut up!" At the time, there were 10 other CEA men at the table in the room, and I recall clearly the smug looks on their faces, reflecting the satisfaction derived from witnessing such humiliation of Arthur Economou. I have a further recollection of that moment in time when Bain screamed "shut up!" at me—I vividly remember my anguish and sharp shame that this could be taking place in America.

I remember, too, that it required more effort than I had ever before exerted in my life to remain composed under the attacks and to restrain myself from getting up and walking out of the hearing room. One "device" that I instinctively developed, which I found helpful at such moments, was to tighten my stomach muscles as hard as I possibly could whenever the referee would lash out. By doing so, I found that I could remain calm in demeanor and was able to counteract the almost overwhelming desire to flee such an environment. I knew that these almost intolerable pressures were deliberately being inflicted upon me for the express purpose of forcing me to either do something or say something which would give the referee an excuse to halt the hearing, which he repeatedly threatened to do, and I was determined to withstand any degree of pressure they might apply in order to continue the hearing through to its proper completion.

The pressures applied by the referee and the prosecuting attorney were both major and minor, but they were virtually continuous. For example, I was not allowed to refer to the government witnesses in any other but the most complimentary terms. At one point, for example, I referred to

Clement Gross, the CEA auditor, as "this young man," and Davis immediately protested "such a reference." I replied that as Gross was indeed a "young man"—23 years old to my 56—it was only natural that I should consider and refer to him as a "young man."

It so happened, and I am prepared to conclusively prove my allegations in a Court of law, that Clement Gross, the CEA auditor, not only falsified and distorted our financial figures and records in his April or May audit, but also criminally perjured himself when testifying under oath at the hearing.

Yet, at the hearing, I was not permitted to even allude to the possibility that Gross was not telling the truth. The following interchange between the referee and myself took place while Gross was on the witness stand at the hearing, (Transcript Page 175-176):

* * *

MR. ECONOMOU: I happen to know that Mr. Gross may not be telling the truth.

THE REFEREE: Mr. Economou, I want you to stop making slurring remarks during the progress of this hearing. I want you to start cross examining this witness right now or you will waive your right to cross examine him. You start asking him questions right now if you ever want to start.

* * *

Another area which was essential to our defense was the loose and abstruse manner in which Rule 1.17 was put together, which permitted almost any interpretation whatever that one might wish to place upon its numerous sub-sections and sub-sub-sections. Yet whenever I tried to broach this subject at the hearing, I was invariably stopped either through objections of the prosecution attorney or the referee, himself. In fact, this was the pattern of "bottling-up Economou" that was relentlessly pursued by the referee during the entire hearing in several other pertinent areas of our defense, such as the matter of due process, the accuracy of the government's witnesses' testimony and the modus operandi of the agency's information-processing and decision-making procedures. All of these areas were vital to our defense presentation—yet I was not allowed to cover

such subjects meaningfully, either in testimony or to offer argument thereon.

I was completely denied an opportunity at the hearing to present proper or adequate argument on these various vital areas of our defense. This was a particularly damaging blow to our defense, for we had fully and completely outlined the nature of such a defense in our Answer to the amended complaint, as requested in the amended complaint itself, which was signed by Richard Lyng, assistant secretary of agriculture. Specifically, the amended complaint stated, in part—

> ". . . The respondents will have 20 days after receipt of this amended complaint in which to file . . . an answer . . *fully and completely* stating the nature of the defense and admitting or denying, *specifically and in detail,* each allegation of this complaint . . ." (underlining supplied.)

In truth and in fact, the detailed completeness of our Answer supplied the referee and the prosecuting attorney a specific working guide as to the exact areas of our defense which they could then plan to exclude at the hearing.

In truth and in fact, the referee at the hearing in effect excluded the presentation of various areas of our defense prior to any attempt on my part to present said areas either in the form of testimony or argument. He excluded said areas, in advance, by referring to the pleadings that I had filed prior to the hearing and saying, openly and clearly, that he knew what areas we would present . . . that certain of such areas would be objected to . . . and that he would sustain such objections.

In other words, important areas of our defense were excluded, by common understanding between the referee and the prosecution attorney, from consideration even before the hearing started—even before they were presented for consideration.

I hereby allege that this high-handed type of CEA judicial modus operandi is a violation of my Constitutional rights.

On October 13, 1970, Davis, the CEA prosecution attorney, filed his brief, following the August, 1970 hearing. This is the brief that the referee photocopied and presented as "his" findings, "his" conclusions and "his" proposed order, ten months later; specifically, on August 17, 1971.

On December 17, 1970, I filed our various and relatively extensive briefs. The Court will recall that, at the August, 1970 hearing, we had not been permitted oral argument by the referee on any of our areas of defense, but the referee had stated that the issues of willfullness, of due process, of the Constitutionality of Section 1.17, were matters of "law" and therefore our side of the story based on these issues should be presented to him in the form of briefs. Our December 17, 1971 brief filings included briefs covering the issue of Section 1.17 Constitutionality, the issue of Willfullness and the issue of Due Process, each in extenso.

As set forth in Section "M," "Maliciousness of the Referee's Report," and in Section "N," "The Myriad Substantive Issues Ignored By the Referee," our December 17, 1970 brief, which formed one of the basic pillars in our defense, was completely ignored by the referee in his so-called "referee's report" filed in August, 1971. In fact, the referee's report also completely ignored Davis' subsequent reply brief, filed on February 10, 1971, in which the prosecution had switched its position on the question of willfullness, and also our compensatory supplement to the reply brief which we filed March 8, 1971.

In November, 1970, with the intensive and extensive effort that I was devoting to writing our brief for filing December 17, 1971, I felt that we had presented a very strong case in our favor and that, in view of the manifold and incontrovertable illegalities, unconstitutional actions, abrogation of due process, surreptitious falsifications and other misapplications of administrative power so conspicuous in CEA Docket No. 167, that the referee, however strong his bias, would actually have no choice but to dismiss the entire case.

Accordingly, about mid-November, I felt sufficiently encouraged by this view of our position to devote some concentrated effort on behalf of The American Board of Trade complex, especially in trying to attract members who are required to purchase their membership at $1,500.00 each, which sales were also to provide an important source of capital for the ABT complex.

To that point in the development of the ABT complex, we had received about 500 unsolicited membership inquiries, but did not have available the required printed by-laws, appliction forms and other literature required for membership promotion. As of November 1, 1970, only two memberships in ABT had been sold.

Now the literature and application forms had been designed and had been printed. Accordingly, I instituted an advertising campaign, by direct mail and in the Wall Street Journal and other financial media. One of the points that we brought out at that time in the promotions and the ads was that the ABT was preparing to register as a nationally-recognized exchange.

On November 9, 1970 in order to implement our plans for registration as a nationally-recognized exchange, I wrote to Richard E. Lyng, Assistant Secretary of Agriculture, stating that we were underway with the preparation of our application for registration under the Commodity Exchange Act. However, since we had departed quite sharply from traditional exchange operational procedures, and with substantive reasons for doing so, I wrote Mr. Lyng, it would be necessary to request special rulings from the Secretary of Agriculture relative to our application. In my letter, I requested a meeting at Mr. Lyng's office in Washington for a preliminary discussion concerning our unique approach to operating an exchange. Such a meeting, or meetings, I further pointed out in the letter, would serve as a foundation for our formal requests for rulings to the Secretary of Agriculture.

In my July, 1970 talk with Mr. Lyng, he appeared interested and even eager to cooperate in establishing a meaningful line of communication with me. I, in turn, was grateful for his expressions of interest and willingness to discuss the unique ABT concepts, for this meant that we would be establishing a sound relationship with the Department of Agriculture and such a relationship would clearly be needed to overcome and neutralize the extraordinary resistances and even venom emanating from the CEA hierarchy.

Lyng's reply was about 10 days in coming. There was no need for a meeting, I was told, for the Secretary of Agriculture could make no special rulings for the ABT. The requirements for registration are set forth in the Commodity Exchange Act, and the Secretary is governed accordingly, the letter stated. Lyng then suggested that we file our application—and they would advise us further about it.

This was a stunning reversal for the ABT. Lyng's letter represented a complete turn-around from the cooperative attitude expressed by him at the July meeting.

I hereby state that it was in November, 1970 that Richard E. Lyng joined the conspiracy to effectively vitiate The

American Board of Trade, and the very contents of his letter to me is indicative of the role that he was to play. The letter contained a half-truth—*in general,* the Commodity Exchange Act outlines the requirements for registration, but the specific rules and regulations that govern the functioning of an exchange are made and promulgated by the Secretary of Agriculture, who is specifically authorized to do so under Section 8a.(5) of the Act, which reads as follows:

* * *

> "Section 8a.(5) (The Secretary of Agriculture) is authorized to make and promulgate such rules and regulations as, in the judgment of the Secretary of Agriculture, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act;"

* * *

Only through a special ruling by the Secretary of Agriculture could the ABT implement its concept of the specialist function on the floor of the ABT; only through special ruling of the Secretary could we hope to implement the wholesome function of administrative personnel executing orders on the floor of the ABT, and prohibiting members from trading for their own accounts on the floor of the exchange; only through special rulings by the Secretary could we operate the ABT on the basis of a centralized bookkeeping and accounting system rather than the present grotesquely inadequate and inefficient decentralized accounting systems.

Yet, a high-ranking official of the Department of Agriculture, Richard E. Lyng, states that the Secretary can make no special rulings on behalf of the ABT.

By refusing us an opportunity for meaningful interchange with cooperative personnel of the Department of Agriculture, he knew we would have to continue to grope in the dark in finalizing our rules and regulations for submission as a part of our application. Moreover, applications for registration under the Act are required to be first submitted to the CEA for consideration. It is the CEA national administrator who recommends to the Secretary whether a new exchange, and its rules, are acceptable. So, that put us right back to the place we had tried to escape from—the CEA national administrator's office.

Lyng's countermove, by ostensibly showing a "fair-minded" attitude in suggesting that we register, places us in a position where our registration would certainly be rejected, owing to the CEA's hostility—thus discrediting the new exchange anew within the financial community.

In a letter addressed to me only a few months ago, the CEA national administrator admitted that the ABT was referred to as a "bucket shop" at meetings which I attended in his office during 1970 and which are described in this affidavit. He also admitted that he would not have recommended that the ABT be approved as a recognized exchange under the Commodity Exchange Act.

I respectfully point out to the Court the conspiratorial duplicity structured by two high officials of the Department of Agriculture and the CEA. 1) The Assistant Secretary of Agriculture, in November, 1970, invites us to submit our ABT application for registration, knowing 2) that the CEA national administrator had already decided to recommend that the application be rejected.

I intuitively recognized that a trap had been set by Lyng's letter and I refused to enter the trap by submitting our ABT application. Thus, we were and are effectively blocked in our registration plans for recognition as an exchange under the Commodity Exchange Act.

In December, 1970, however, a new door of hope opened up for our registering as a nationally-recognized exchange. This new avenue developed initially in the form of a letter from Mr. Ezra Weiss, chief counsel of the U. S. Securities and Exchange Commission, Washington. It was a 3-page letter, in which Mr. Weiss, having learned through our announcements in the financial press that we intended to register the ABT as a securities exchange, set forth in detail the general registration requirements for a securities exchange and requested that specific data and descriptive material, Articles of Incorporation, by-laws and other information be filed with his office, but that the material all be addressed to Mr. Wolfson, one of his associates.

We were pleased to receive Mr. Weiss' letter, for it presented a golden opportunity to take the important step toward registering as an exchange which would bring with it the recognition and stature needed to attract members to the ABT complex and broaden the scope and the base of our operation.

I promptly acknowledged Mr. Weiss' letter by telephoning Mr. Wolfson—who, in turn, stated that our registration files and data would all be coordinated by another member of the SEC staff, Mr. Liebert. I then telephoned Mr. Liebert and talked to him on two or three occasions in detail pertaining to the plans of the ABT and also about a few of its unique and innovative conceptual and operational features. Mr. Liebert's attitude was very gracious and at two different junctures in our phone talks during December, 1970, stated that the SEC was only too happy to have an interchange of ideas and views on any exchange prior to registration, so that actual formal registration could then be filed and assured of prompt consideration and acceptance.

I asked around mid-December for a meeting with the SEC staff so that some of the material that Mr. Weiss had requested could be presented in person, and Mr. Liebert said that such a meeting could definitely be arranged. A few days later he telephoned me from Washington to say that a meeting could be held around the beginning of January, 1971. Meantime, we had completed mailing various packages of printed and mimeographed material that Mr. Weiss had requested. Though not specifically requested by the SEC, we also mailed the pleadings and briefs that we had on file relative to the CEA Docket No. 167. Mr. Liebert appeared generally to know about the CEA action against us but was apparently not familiar with the details.

There remained one basic presentation that I felt should be made in person to the SEC staff and that material pertained to the plans and concepts of a publicly-owned corporate body to act as specialist on the floor of the exchange, rather than the concept of individual members and member firms acting as specialist, as provided under the Securities and Exchange Act of 1934. This was an area I felt should first be personally discussed with the SEC staff, rather than simply including a written "cold" presentation on the subject with the material which we had mailed to Mr. Liebert.

On December 17, 1970, I personally journeyed to Washington to file our 50-page brief in CEA Docket No. 167. The filing was made at the hearing clerk's office, after which I walked along one of the corridors of the building in search of the cafeteria. In the corridor, I abruptly came face-to-face with the CEA national administrator and the assistant administrator, Dr. Swantz. They asked if I was planning

to call to see them and I said no, but would always consider an invitation to talk with them. I was promptly invited to pay them a visit and a few minutes later we were in the CEA national administrator's office, where Mr. Stulz of the CEA staff also joined us. We talked generally about CEA Docket No. 167 and I again repeated that they had started an action that was completely illegal and should be withdrawn. The CEA national administrator replied, in general, that should a decision finally be made against me that I could always appeal, as a normal part of administrative procedure. Within a matter of about 10 minutes after the meeting started the subject of discussion turned to The American Board of Trade and suddenly the CEA national administrator again referred to the ABT as a "bucket shop." I reacted sharply, with an involuntary expletive, pointing my finger at the CEA national administrator and in a raised voice told the three men that I was sick and tired of hearing the ABT called a "bucket shop" each time I called on the CEA national administrator. That was my third visit there during 1970 and on each occasion The American Board of Trade was openly referred to as a "bucket shop." Within a few minutes, I took my leave of the three men.

Early in January, 1971, Mr. Liebert of the U. S. Securities and Exchange Commission staff in Washington phoned and said that a meeting had been set up for late January. I agreed to the date. About mid-January, he called again to confirm the meeting date and at that time he asked me whether I planned to be accompanied by an attorney and I said no, for this was a meeting that would be devoted to the structure and the organizational concepts of the ABT, rather than the legal aspects.

My meeting with the Washington, D. C. staff of the U. S. Securities and Exchange Commission was held in late January, 1971. I had prepared a brief presentation of The American Board of Trade Service Corp.'s role as a specialist within the price-making "mechanism" of the ABT and also a list of questions on which clarification was needed from the S.E.C. staff.

The meeting was attended by five S.E.C. staff members. Mr. Wolfson, Mr. Liebert, Mr. Rosen, Mr. Saperstein, and a fifth member whose name I do not recall.

I started to thank the men for taking time out to see me, but Mr. Rosen, who conducted the meeting, immediately

interrupted to say that the S.E.C. staff preferred that I did not make any presentation, for I was not accompanied by an attorney. I replied that I could not understand why I could not, for I had been invited to meet with them, had prepared for the meeting and had journeyed to Washington for the specific purpose of meeting with them. Mr. Rosen then adopted a crisp and hostile attitude—an attitude that pervaded the remaining portion of the meeting and was displayed not only by Mr. Rosen but also by Mr. Wolfson and Mr. Saperstein. Mr. Rosen in particular was critical of and made an attack on some of the conceptual and operational features of the ABT exchange complex.

Mr. Rosen and the others turned a deaf ear to my pleas to be heard. They insisted that I first secure an attorney and arrange to meet with the S.E.C. staff either in Washington or in New York. I, in turn, was equally adamant about my right to make a presentation to a major government agency without being flanked by an attorney or two.

To reinforce my pleas to be heard, I specifically called the attention of the men to Section 6(a) of the Administrative Procedure Act which permits representation of a person in any agency proceeding either by himself, by counsel or with counsel. However, the men remained adamant.

Toward the end of the 20-minute meeting, I became quite indignant and said outright that obviously the five men had their orders not to discuss the ABT and that, once again, I was being treated unfairly by a government agency. I also made it clear to the S.E.C. staff that registration was of paramount importance to us and that it was essential that I be allowed to respond to Mr. Weiss' request that I file basic data with the S.E.C. as a prelude to actual registration. However, my pleas were of no avail.

At first, I simply could not understand this sudden change in the S.E.C. attitude—from an attitude of cooperation, as exemplified by the S.E.C. approval of two of my stock issues in 1969 and 1970 involving new concepts, The Precious Metals Syndicate for $2,500,000.00 and the E.F.&D. for $300,000.00, to one of callous indifference and open hostility with respect to the ABT, with absolutely no logical explanation being given for the abrupt change.

Shortly after the Washington S.E.C. meeting, I arranged to meet with two members of the S.E.C. New York staff. This second meeting, held in March, 1971, was conducted by

Mr. Sorokin of the S.E.C. New York staff and I was accompanied by an attorney. The attitude of Mr. Sorokin, however, was similar to that of Mr. Rosen—brusque and hostile. I was asked by Mr. Sorokin to answer questions pertaining to the ABT and its operations and, in turn, I submitted printed material and data pertaining to our new exchange.

Since the meeting with Mr. Sorokin, I have been unable to develop the meaningful relationship with the U. S. Securities and Exchange Commission that would be required to finalize our rules and regulations prior to submitting our formal application for registration under the Securities and Exchange Act of 1934. I have been treated by the SEC as persona non grata. I cannot as much as get a SEC official to talk to me on the telephone.

Information and evidence is now at hand and available to me to show conclusively that the members of the CEA hierarchy were in close communication with officials and personnel of the U. S. Securities and Exchange Commission during December, 1970 and January, 1971, with reference to the operations of The American Board of Trade. During this period of time, the CEA conveyed distorted, false and libelous information to the SEC for the specific purpose of creating a situation of animus between the SEC and the ABT and thus thwarting our plans for registering the ABT with the SEC. The CEA actually did succeed in its objective of creating the conditions that made it impossible for the ABT to pursue its plans for registration. These acts by the CEA, I submit, are part of the conspiratorial acts of the defendants since the conspiracy was formulated in April, 1969, and a violation of my Constitutional rights.

On February 10, 1971, the CEA prosecuting attorney, Richard W. Davis, Jr. submitted his reply brief to the brief that I had filed in CEA Docket No. 167. In his reply brief, Davis deliberately manufactured facts to serve as a base on which the referee could subsequently reinforce his predetermined goal of finding us "guilty as charged."

Specifically, Davis manufactured a post-audit interview that Fitzpatrick had supposedly held with me, when in truth and in fact such an interview had never been held. Davis also attempted to tie in the Jackson and Chadonic post-audit interviews to support the CEA "case," whereas these interviews were not related in any manner to the question of the validity of the documentation of our assets.

In addition, Davis asserted in the reply brief that willfullness on our part had been alleged and proved by the CEA in CEA Docket No. 167, whereas no proof whatever had been presented that we acted willfully. In fact, the CEA has made no effort to present evidence of any kind to sustain their charge that I acted willfully.

The Davis fabrications are set forth in somewhat more detail under Section "P"—"Extensive Pattern of CEA Falsifications"—of this affidavit.

On March 8, 1971, I filed, with the permission of the referee, a brief entitled "Compensatory Supplement to Brief." I had requested permission to file said brief in order to compensate for a 25-day extension of time granted by the referee to the CEA prosecution attorney for filing of the CEA's reply brief. The 25-day extension of time had been granted by the referee without notice to us or consideration of our views, as explicitly required by the rules under the Commodity Exchange Act.

Matters of granting of extension of time are covered by Section 0.22(c) of the rules, which states, in part:

* * *

"(c) Extensions of time. The time for filing of any document or paper required or authorized under the rules * * * may be extended by the referee * * * *after notice to and consideration of the views of the other party.*" (Underlining supplied.)

* * *

Since the referee had made no attempt to give notice to us or to consider our views in granting a 25-day extension of time to the prosecuting attorney for filing of a key brief, I felt that this was still another example of violation of rules by the CEA hierarchy for the purpose of achieving a predetermined objective. I accordingly protested the unfair advantage given to the CEA prosecution to prepare a key brief in the proceeding—to which normally, under the rules, we would not be permitted to reply. For that reason, I felt that we, too, should have extra time in which to prepare additional briefs, to compensate for the advantage that had been improperly gained by the CEA prosecution attorney.

It is fortunate that we did ask for permission to file our "Compensatory Suplement to Brief" for it was in the reply brief that Davis, the CEA prosecuting attorney, dis-

torted and manufactured facts concerning the activities of the three CEA auditors in a manner as to illegally reinforce the government's "case." Our "Compensatory Supplement to Brief," then, served to bring the record of the CEA Docket No. 167 at that point into more accurate balance.

In July, 1971, we filed protest on the record of CEA Docket No. 167 relative to the delay in receiving the referee's report, which, according to Section 0.16(c) of the rules of the Commodity Exchange Act, is to be filed by the referee "within a reasonable time." We were still confident that, regardless of personal bias, in view of the facts engraved on the record of CEA Docket No. 167, the referee would have no choice but to exonerate us completely. Yet, over five months had gone by and we were still struggling under the cloud of these fabricated charges.

Early in August, I tried to follow up by phone to the CEA offices to ascertain the status of the expected referee's report, but to no avail. Shortly thereafter, I filed a formal protest with the Secretary of Agriculture and requested that he direct the referee to file the report without further delay.

On August 17, 1971, the referee filed his so-called "referee's report," an actual photo-copy of the prosecuting attorney's initial brief. We vigorously protested the maliciousness and unfairness of the "referee's report" in a formal letter of protest to the Secretary of Agriculture. In that letter, we also pointed out that the referee had abdicated his responsibilities and, by his acts, had joined in the CEA conspiratorial plan and had reinforced the monolithic structure of the CEA's assault, against which there could be no hope of meaningful defense.

The "referee's report" of August, 1971, served to completely confirm the structure and purpose of the CEA assault upon me and The American Board of Trade, and that the entire CEA Docket No. 167 should now be a matter of equity in a U. S. District Court. I knew, too, that further substantial and irreparable harm would occur if the CEA were allowed to proceed with its conspiratorial assault.

The CEA monolithic assault made it impossible for us to surface issues of fact and law in our defense; the CEA also made it impossible for us to surface on the record of CEA Docket No. 167 any of the issues of fact and law which

clearly indicated that an organized conspiracy had been in progress since April, 1969.

It was my decision in October, 1971, to prepare to ask a U.S. District Court to intervene and assume jurisdiction in CEA Docket No. 167, and I so advised the CEA.

* * *

"L"

The Mock Hearing

A so-called "hearing" relative to CEA Docket No. 167 was held in New York City on August 5, 6, 7, and 10, 1970, before Chief Hearing Examiner Jack W. Bain, U. S. Dept. of Agriculture, as referee. I appeared pro se, on behalf of my company and myself. The transcript of the hearing contains 551 pages.

I hereby state that the entire hearing proceeding was a sham and a farce and conducted by the referee in a totally unfair and discriminatory manner designed to bully me into a manner of presentation which would obscure the force of my presentation. Further, the proceedings were featured throughout by repeated characterizations of the CEA's witnesses as being of veracity beyond question, whereas my testimony, witnesses, opinions, contentions and objections were consistently treated with scorn.

I hereby state that the conduct of the referee at the hearing was in direct and clear violation of Sec. 0.7(c) of the Commodity Exchange Act, which states that the referee shall conduct the hearing in a "fair and impartial manner," and that the referee's conduct was also in direct and clear violation of the Administrative Procedures Act and in violation of my Constitutional rights.

I hereby state that the referee conspired, as a bona fide member of the prosecution team, to structure the hearing in a manner as to exclude evidence that would strengthen our position, but to include all evidence that the prosecution contrived to present.

I was consistently cut short in pursuing relevant lines of inquiry and refused the right to make further inquiry, cross examinations and offers of proof. I hereby state that this was a direct violation by the referee of Sec. 0.7(c) and evidence of the conspiratorial nature of the hearing which was, from the standpoint of the CEA, a link in the overall process

of "railroading" me and my affiliated enterprises to disaster.

Heresay statements of a third party, required by law to be a totally independent party, were allowed in the record, on the ground first that he was a "member of the organization" and secondly an "agent"; both untrue and unproven. I hereby state that this is another example of how rules and regulations can be interpreted as desired and at will by CEA officials in order to achieve an objective, as, for example, the destruction of The American Board of Trade, which has proposed and has implemented procedures and operations designed to eliminate the many dysfunctions of the present archaic exchange system which has proved so harmful and injurious to the investing public and to trade groups these past 30 years.

The referee consistently refused to allow any questioning or examination by me with respect to interpretation of the policies, rules and regulations of the Commodity Exchange Authority, although such was essential to the case and an integral part of my defense. I hereby state that this "holier than thou" and "the government can do no wrong" attitude on the part of the referee precludes even the possibility of a fair and impartial hearing, as would be required by any responsible judicial process and by Sec. 0.7(c) of the Commodity Exchange Act and the Administrative Procedures Act. Accordingly, the hearing was a sham and in violation of my constitutional rights.

The referee refused my requests for subpoena assistance in such a manner as to frustrate the proper presentation of my defense, and so as to frustrate offers of proof.

The referee refused to allow my requests for necessary and appropriate recesses, where required for adequate preparation of our defense.

Our presentation of testimony in our defense was repeatedly, inequitably and in a discriminatory manner cut short and objections improperly sustained thereto so as to frustrate our defense and offers of proof.

Referee repeatedly threatened to cancel the hearing and allow "each side to file briefs," owing to the apparent lack of knowledge on my part of the proper procedures in the hearing. I was thus intimidated and inhibited, for fear of making statements that would displease the referee.

The referee bullied me, literally, into answering a highly improper line of questioning under cross-examination by threatening to delete all my testimony in the hearing if I did not answer the improper line of questioning.

The referee made no effort to arrange for a pre-hearing conference as required by the rules, particularly in view of my inexperience as a hearing participant. When I brought the matter up, after hearing had opened, referee allowed exactly 3 minutes for the pre-hearing conference. I was at a distinct disadvantage throughout the hearing owing to the lack of a proper pre-hearing conference.

Throughout the hearing, the referee kept stating that various matters of willfullness, due process and questions of the rules and regulations of the CEA were "legal" matters and should properly be argued in brief form to be submitted to him after the hearing closed.

Yet rule under Sec. 0.57(d)(8) explicitly states that the referee may, at the hearing, "Hear oral argument on facts or *law*" (underline supplied).

I hereby ask: If we are not allowed to present facts of law at the hearing and are told that such belong in a brief, then, when the briefs are filed but are ignored or thrown in a judicial wastebasket by the referee, just when are these arguments or facts of law taken into consideration in the judicial process, as implemented by the CEA?

* * *

"M"

Maliciousness of the Referee's Report

For over five months, March 8 to August 17, 1971, we had eagerly awaited the referee's report. We expected and had the basic right to expect that the referee, as a judicatory official of the CEA, would objectively evaluate and give due consideration to our side of these proceedings, which, over the previous 20 months we had presented in the form of—

1) Our answers and affidavits filed in response to the allegations;

2) Our Letters of Petition to the U.S. Secretary of Agriculture for relief from quest onable, illegal and even unconstitutional actions on the part of the CEA;

3) Our testimony and evidence presented at the 3½-day hearing held in New York City in August, 1970;

4) Our findings of fact, conclusions and briefs filed in December, 1970, (50 pages) and in March, 1971 (19 pages) in which we specifically set forth the numerous basic issues of law that have been raised by the CEA acts, involving our constitutional rights, deprivation of due process and illegal acts on the part of the CEA including surreptitious falsification of our financial records and the release to the public and the press of an amended complaint containing falsified data pertaining to our financial condition.

I repeat: We expected and had a basic right to expect, once the proceedings attained the level or point where a CEA judicatory official had the CEA allegations and the entire spectrum of our responses thereto, in front of him, that the judicial aspects and functions of the CEA Docket No. 167 proceedings would be implemented in an objective manner and with fairness.

Yet, the referee's report made no attempt whatever to even list or mention, let alone analyze and consider, the various aspects of our vigorous and extensive defense against the deliberately fabricated allegations of the CEA.

And, the referee's report made no attempt whatever to even list or mention, let alone analyze and consider, the myriad issues of law, involving our constitutional rights, deprivation of due process and illegal actions on the part of the CEA, which we raised in our defense and which are set forth explicitly in the record of CEA Docket No. 167.

On the contrary, the referee's report can be classified as a most malicious document and is clear evidence that the referee literally and shamefully abdicated his responsibilities in CEA Docket No. 167, and joined with the CEA heirarchy and prosecution in their shameful campaign to destroy my reputation, and by this means, destroy The American Board of Trade which I have founded and which I head.

The referee's report consisted of 23 pages—*of which, we were shocked to discover, 20 pages were actually xeroxed or photo-copies, with minor alterations, of the CEA's brief filed against us in CEA Docket No. 167 on October 13, 1970.* Yes, these 20 pages of the so-called "referee's report" were actually written and filed by Richard W. Davis, Jr., the CEA attorney, in his role as prosecutor for the government's "case" against us.

So the judiciary process or aspect of CEA Docket No. 167 now has openly and unashamedly merged and blended with

the prosecution function of the CEA. Thus, we are faced with a powerful monolithic attack by the CEA, in which a judicatory official has enlisted in the services of the department of prosecution in the CEA—in the attempt to inflict discredit upon us and to destroy the various organizations which I head in the commodity field.

The very thought of a CEA judicatory official photo-copying, after a 5-month delay, 20 pages of a document written and filed by the CEA prosecuting attorney and presenting the 20 pages as "his" findings, "his" conclusions and "his" recommendations is an affront to the judicial processes of our nation, and in blatant violation of even the CEAs own regulations pertaining to the content of the referee's report. Such a procedure might be comprehensible given a clear-cut "open and shut" case with no valid defense. However, in this case where we presented a powerful and apparently unanswerable defense, and, in addition, raised many issues involving illegal and unconstitutional activity on the part of the CEA, for the referee to act as if our entire case had been filed into his official wastebasket and was non-existent, is nothing short of display of judicial arrogance and abdication of all pretense to judicial propriety.

This monolithic approach to "justice"—whereby the judiciary function blends, synthesizes and forms, literally, a perfect congruity with that of the prosecution is even more abhorrent and frightening when one considers that the CEA also acted as the rule-maker, and supplied their own special made-to-order-to-suit-the-need interpretation of their rules.

Thus the referee has overtly zeroed-in for the "kill." The monolithic structure of CEA Docket No. 167—involving the CEA rule-making . . . CEA interpretation of all the rules . . . CEA investigation and so-called "fact-finding" . . . CEA manufacture of the "facts" they found by falsification of our financial records . . . CEA presentation of these contrived "facts" in the prosecution process—has now been confirmed and reinforced by the CEA judicial function—and the entire process has coalesced and molded into an instrument of destructive power for the purpose of annihilating a newborn organization, The American Board of Trade.

I submit the following as specific evidence of the maliciousness of the referee's report.

1) The referee had over five months in which to evaluate

and weigh the various issues and aspects of the proceedings in CEA Docket No. 167, which are already clearly set forth in the record. For the referee to photo-copy 20 pages of the presecution's brief against us and to place these 20 pages in the record as "his" findings, "his" conclusions and "his" recommendations is not only evidence of maliciousness, but also of judicial arrogance and misconduct.

2) The above-mentioned 20 pages filed by the referee on August 17, 1971, were written and filed by the CEA's attorney on October 13, 1970. For the referee to file the 20 photo-copied pages as "his" report, and to ignore the briefs filed by us in December, 1970 and March, 1971, is evidence of maliciousness, arrogance, and judicial misconduct.

3) It is a malicious act on the part of the referee to "recommend" in "his" report of August 17, 1971 that my company be suspended as futures commission merchant for 90 days. The truth is that my company *resigned on December 3, 1970 as registered commission merchants, in protest of the manner in which the Commodity Exchange Act was being administered to the detriment of the investing public.* Therefore, this recommendation for a suspension which cannot be implemented is a dishonest act with the sole purpose and result being to create *a false impression on the record that my company is subject to suspension, and actually may be suspended.*

4) It is evidence of maliciousness, and of judicial arrogance and irresponsibility for the referee to allow to remain in "his" report a serious misquotation of the Supreme Court of the U.S. This misquotation was contained in the government's brief filed October 13, 1970 and specific attention was called to this serious misquotation in our brief filed December 17, 1970.

5) It is arbitrary, malicious and malevolent action on the part of the referee to present in his photo-copied "conclusions" of August 17, 1971 the statements in the government brief filed October 13, 1970 that our business typified the type of shoestring operation Congress had in mind when it enacted the financial requirements of Section 4F(2) of the Act, and that (such firms) "have been found most likely to dip into customers' funds and resort to sharp trading practices to bolster their money needs." The foregoing is a libelous statement. It has no relation whatever to our exemplary business record, long known to the CEA; to the

fact that, by their own admission, the CEA was ignorant of our over-all financial condition and to the fact that since the outset of this case we had been out of the business and all customers' funds were refunded long ago.

6) I hereby respectfully suggest to the Court that the foregoing are not only evidence of maliciousness of the referee's report and the abdication by the referee of his responsibilities in CEA Docket No. 167, but also in overt violation of the term "referee's report" as specifically and explicitly set forth under Sec. 0.2(n) of the rules and regulations under the Commodity Exchange Act. Section 0.2(n) reads as follows:

> "The term "referee's report" (presiding officer's report) means the referee's report to the Secretary, and includes the referee's proposed (1) findings of fact and conclusions with respect to *all material issues of fact, law or discretion, as well as the reasons or basis therefore,* (2) *order, and* (3) *rulings on findings, conclusions and orders submitted by the parties.*" (underlining supplied)

* * *

"N"

The Myriad Substantive Issues Ignored by the Referee, Who Thus Abdicated His Responsibilities

Numerous substantive issues of the law, and of facts, are interwoven within the framework of the proceeding in CEA Docket No. 167 involving our Constitutional rights, deprivation of due process and illegal actions on the part of the CEA. All these issues were ignored by the referee in his "report."

Specifically, the "referee's report" made no mention of . . . made no attempt to take into consideration . . . made no attempt to rule upon or to weigh or judge . . . the following issues which have been raised and are a part of the record of the proceedings:

A) . . . that the CEA had no legal, factual or moral basis for its complaint against us in February, 1970, alleging underfinancing, with said "underfinancing" actualized by the CEA itself in disallowing certain of our assets. The CEA did not question the existence of the assets, but disallowed them, surreptitiously and retroactively, by the

expedient of asserting that they were not correctly documented to meet the brand-new CEA rules under Section 1.17.

B) . . . that the rules under Section 1.17, on which the complaint was based, are so abstrusely and amorphously written that the CEA may interpret and apply them in any manner they desire; the rules under Section 1.17, therefore, constitute deprivation of due process and are in violation of our Constitutional rights;

C) . . . that due process involving proper notification to us was not observed by the CEA on numerous occasions, thus violating our Constitutional rights;

D) . . . that the CEA's allegation that we *willfully* violated Section 1.17 of the rules is without legal, factual or moral foundation, and is completely contradicted by our unchallenged testimony at the hearing and in briefs detailing our extensive efforts to cooperate with the agency in meeting their requirements under the new regulations. The CEA's arbitrariness and maliciousness in alleging that we "willfully" violated Section 1.17 of their rules, thus enabling them to "legally" issue a complaint without the need to advise us or afford us the customary due notice as required by law, is set forth in detail under Section "O" in this affidavit.

E) . . . that the CEA, in abrogating due process, attempted to structure a convenient, self-serving legal base through the use of its own special made-to-order concept and interpretation of willfullness in CEA Docket No. 167, which is in contradiction to the definition of willfullness established by the Supreme Court—and in so attempting to structure its position, acted arbitrarily and maliciously and in violation of our Constitutional rights. The CEA's illegal acts in depriving us of customary due notice of possible violations, as specifically required under Section 0.3(c) of the rules and regulations of the Commodity Exchange Act are set forth under Section "O" in this affidavit.

F) . . . that the CEA's February, 1970 complaint against us and subsequent actions, steps and measures taken by the CEA in this proceeding, were intended specifically to effectively vitiate, if not completely destroy, The American Board of Trade in its fledgling stage, by discrediting me as its founder and shaking public confidence in the new enterprise;

G) . . . that the CEA, in contradiction to their customary

and expected policy of giving notification of possible violations repeatedly, both verbally and in writing, "in order to afford the firm an opportunity to bring itself into compliance," as required by Section 0.3(c), did not notify us at all that they were retroactively and secretly declaring a large portion of our assets invalid in order to bring damaging charges against us long after I had ceased trading under their jurisdiction and had launched The American Board of Trade, clearly both maliciousness and denial of due process;

H) . . . that the CEA did not question our assets as reported on our initial statement dated March 31, 1969, which led us to file our June 30 statement with substantially the same assets. Many months later, when all trading activity under CEA jurisdiction had ended and The American Board of Trade was launched, the CEA retroactively and without due notice to us disallowed many of these assets and based their complaint against us on the under-financed condition which resulted from their own surreptitious actions;

I) . . . that through a process of entrapment (See J-6) the CEA kept us under their jurisdiction, subject to their financial requirements and vulnerable to their malevolent attack long after we had requested our rightful freedom. It required an eventual petition to the Secretary of Agriculture to finally attain our freedom, which was made retroactive by several months;

J) . . . that 8 months after we had effected our last trade under their jurisdiction, the CEA filed an expanded complaint based on their own falsification of our financial figures, and that in this effort to expand and strengthen their "case," they overstepped all bounds of basic legal, moral and ethical standards by unconstitutional conduct in numerous areas, including:

1) The surreptitious falsification of our financial records to show a totally untrue picture of financial deterioration at the rate of $4,000.00 per month, as of March 31, 1970, by secretly re-classifying a valid reserve account into an account payable;
2) Incorporating the falsified figures into an expanded complaint, without notice to or discussion with us about the arbitrary re-classification;
3) Making the amended complaint available to the press, assuring nationwide publicity relative to this

false picture of a steadily eroding financial structure, which caused extremely heavy damage to The American Board of Trade and its affiliated organizations;
4) Timing the amended complaint and press release to coincide with the first public announcement of a stock offering by The Economou Financial and Development Corp., which was issued for the purpose of financing The American Board of Trade, with the effect of vitiating the sale of the stock issue;
5) After receiving notice of the complaint in February, 1970, we asked for a hearing to determine the validity of the complaint; *that hearing was not granted us;*
6) Promptly upon receiving the initial complaint in February, 1970, we asked for instructions for reclassifying from status under Section 1.17 to status under Section 1.31a, which has no financial requirements, in view of the fact that we had almost completed phasing out of business, yet the full instructions were not forthcoming until we petitioned the U. S. Secretary of Agriculture for relief late in July. This action of entrapment on the part of the CEA was a clear violation of our Constitutional rights.

I hereby state that the referee, in omitting mention of and making no attempt to take into consideration the foregoing, abdicated his responsibilities in the judicial process that is explicitly and implicitly required in administrative proceedings of this type, in order that our side of the story might receive fair and just consideration.

In addition to the foregoing, I also set forth the following additional significant and substantive omissions in the referee's report:

K) . . . At the hearing held in August 1970, at which I appeared pro se, I raised many issues pertaining to willfullness, deprivation of due process, illegal acts on the part of the CEA, and unconstitutional aspects of the new Sec. 1.17 of the rules. I was told by the referee that these issues were "issues of law" which should be properly filed for consideration by him in the form of briefs. These briefs were filed in December, 1970 and March, 1971. The

fact that the referee did not even recognize or acknowledge these issues is evidence that he has abdicated his responsibilities in these proceedings.

L) . . . I have stated repeatedly in the proceedings in CEA Docket No. 167 that the CEA's actions and allegations were without legal or factual foundation. The referee did not rule on this position and in not ruling, abdicated his responsibilities.

M) . . . The referee filed his "report" on August 17, 1971 of which 20 of the 23 pages were photo-copies of the CEA's prosecution brief filed in October, 1970. In congruently and identically submitting the prosecution's "case" as "his own" the referee has completed, reinforced and confirmed the monolithic structure of the CEA's attack, and in enlisting in the services of the prosecution, the referee overtly abdicated his responsibilities in these proceedings as a judicatory official. He has now openly become a full-fledged member of the CEA prosecution team, *leaving us with no vestige of hope that our side of this case will receive a fair judicial appraisal—or indeed, any appraisal at all.* The referee's omission of any appraisal or even mention of our side of the story thus leaves us without any hope whatever that we will receive fair treatment or even consideration in CEA Docket No. 167.

N) . . . I have stated repeatedly that the CEA's auditors deliberately and surreptitiously falsified our records without notice to or consultation with us and used the falsified records in an expanded complaint. The referee did not rule on our position, and thus abdicated his responsibilities.

O) . . . I filed an extensive brief in December, 1970, detailing the unconstitutionality of Sec. 1.17 of the rules. The referee did not rule on, or even attempt to analyze this position. In not facing this problem, the referee has abdicated his responsibilities.

P) . . . I filed an extensive brief in December, 1970, setting forth reasons why we did not *willfully* or in any manner whatever violate the law. The referee made no meaningful attempt to analyze judicially the question of *willfullness* and in avoiding this analysis, he abdicated his responsibilities.

Q) . . . I filed an extensive brief in December, 1970, setting forth reasons why we were not afforded proper due notice of any violation, in any form whatever. The referee

did not rule on our claims and in not ruling abdicated his responsibilities.

R) . . . I have maintained in briefs filed in the proceeding in CEA Docket No. 167 that we were entrapped by the CEA under Sec. 1.17 and prevented from re-classifying to Sec. 1.31a from February, 1970 to August, 1970 and that it required a Petition to the Secretary of Agriculture to release us from this trap. The referee did not rule on this entrapment claim, which is illegal and unconstitutional, and in not ruling, abdicated his responsibilities.

S) . . . As a matter of fact, the referee did not rule on any issue or any question of law which we have raised, as he is specifically required to do under CEA rules and regulations and under the Administrative Procedure Act. In not facing the explicit and implicit need for required judicial process the referee has abdicated his responsibilities.

T) . . . In and as a part of our Answer to the Amended Complaint, we filed an affidavit in which we set forth my background of experience in the commodity field, consisting of 15 years during which I had achieved basic expertise in administrative matters, including legal and accounting procedures, and during which I had achieved a record of conduct that was impeccable and that was not marred in any way with even minor misconduct in any form. This exemplary record was not contested by the CEA at any time, nor was it the intention of the CEA to contest this record, as evidenced by Mr. Davis' statement to this effect at the August, 1970 hearing, yet the referee makes no mention of or takes into consideration at any point in the report the significance of a person's character, reputation based on wholesome contribution to his field of activity, *and to the reliability of such a person's testimony in proceedings of this kind.* We are asked to file our side of the story, to testify—then all is conveniently ignored by the referee. This is a substantive omission in the referee's report, in not taking into consideration *even an iota of evidence given to support our position.*

U) . . . On page 14-15 of our Compensatory Supplement to Brief filed March 8, 1971, we requested that the CEA produce evidence in the form of factual answers to four questions, demonstrating that our reserve account, which the CEA surreptitiously and falsely re-classified into a liability on our books, met with their own definition of a

liability, as they have repeatedly claimed. The CEA has not answered these questions and indeed cannot. Yet the referee, in now doing his duty as a faithful member of the prosecution team, makes no mention of this fact.

V) . . . The referee failed to submit his report on the Prehearing Conference as specifically required by Sec. 0.15 of the rules and regulations of the Commodity Exchange Act. This omission is highly significant in that it buries the fact that the Prehearing Conference was held *at my specific request after the opening of the hearing* in New York on August 5, 1970, and that it was conducted by the referee in a farcical, meaningless and illegal manner. Failure of the referee to submit his report on the Prehearing Conference is still another example of the irresponsibility of the referee.

W) . . . I have set forth in the record of CEA Docket No. 167 that a pattern of malicious intent is clearly evident in the acts of CEA officials and personnel. Significantly, in February, 1970, after the American Board of Trade was underway and after I had ceased trading under CEA rules, we were unexpectedly bludgeoned by the CEA complaint retrospectively alleging that we were underfinanced, under their interpretation of their new rules, during two successive quarters the previous year. The CEA made this farcical complaint possible by unilaterally and without notice to or consultation with us, retrospectively disallowing a large part of our valid assets. In other words, when our first financial statement was filed in 1969 all of our assets were apparently acceptable to the CEA. Otherwise, they would surely have followed their customary procedure and informed us prior to our filing a second statement three months later with substantially the same assets. Still nothing was said to us. In fact, it appears that our assets were acceptable until after The American Board of Trade was launched and we were no longer doing business under the jurisdiction of the CEA. At that point, when the agency was casting around for some means to discredit the new exchange, the assets suddenly became retroactively unacceptable and were secretly disallowed in order to form the basis of a complaint against me in denial of my constitutional right of due process. The CEA did not try to pretend that the assets were not there, but based this entire

complaint on the belated claim that they had not been acceptably documented. The referee makes no mention whatever in his report with respect to these allegations which, in any judicial process, must be considered as highly substantive issues.

Each and every "Proposed Findings of Fact," each and every one of the "Proposed Conclusions," and each and every "Proposed Order" in the so-called "referee's report" is a sham and a judicial fraud and this does not in any way constitute a proper report within the spirit and intent of the Commodity Exchange Act and of the Administrative Procedure Act.

On the contrary, the "referee's report" represents total abdication of his judicial functions in these proceedings, as outlined supra. The "Proposed Findings of Fact," the "Proposed Conclusions" and the "Proposed Order" which appear in this referee's report, are, in fact, photo-copies of the "Complainant's Suggested Findings of Fact, Conclusions and Order, and Brief in Support Thereof" which was filed by Richard W. Davis, Jr., attorney for the Commodity Exchange Authority, on October 13, 1970. This pure and simple "lifting" of the prosecution's paper, is obvious upon even cursory inspection. Even the original spelling errors were accepted and reproduced. It is interesting and pertinent to note that this photoing of the government's position took place after the referee had made no report for approximately 5 months after our "Compensatory Supplement to Brief," the last relevant filing, and that the photoing completely ignored even the CEA's February 10, 1971 reply brief, which shifted several positions which had been taken in the photoed October 13, 1970 brief. It is difficult to conceive of how a more cavalier abdication of the referee's function could be made.

I respectfully suggest to the Court that the referee's leaving such a myriad of substantive issues unnoticed and unrecognized is not only in direct and overt violation of Sec. 0.2(n) of the Commodity Exchange Act, which, we repeat, reads as follows:

> "The term "referee's report" (presiding officers report) means the referee's report to the Secretary and includes the referees proposed (1) findings of fact and conclusions *with respect to all material issues of fact,*

law or discretion, as well as the reasons or basis therefore, (2) *order, and* (3) *rulings on findings, conclusions and orders submitted by the parties.*" (underlining supplied)

—but also renders the referee's report a legally null and void document which should be expunged from CEA Docket No. 167.

* * *

"O"

Substantive Issues of Willfullness and Due Process

I respectfully suggest to the Court that the issues of willfullness and due process which pervade the entire structure of events and acts in CEA Docket No. 167, but which have been effectively buried and not allowed to surface by the unbalanced judicial process of the CEA, are key elements of constitutional law in the CEA conspiratorial acts against me and my company.

Under specific procedural rules of the Commodity Exchange Act, the CEA is not permitted, except in cases of willfullness or in which the public interest or safety otherwise requires, to institute proceedings against a registrant unless the facts or conditions which may warrant such action are first called, in writing, to the attention of the person in order to allow such person an opportunity to achieve compliance with the law.

In the Commodity Exchange Act, this specific procedural rule is under subsection (c) of Sec. 0.3, Institution of Proceedings. Rule 0.3(c) reads, in part, as follows:

* * *

"(If) . . . the Secretary has reason to believe that any person . . . is violating or has violated any provision of the Act or any of the rules and regulations . . . he will institute a proceeding: *Provided,* that in any case, except one of willfulness or one in which the public health, interest or safety otherwise requires, prior to the institution of a proceeding for the suspension or revocation of a registration or license, facts or conditions which may warrant such action shall be called in writing, to the attention of the person complained against, *and such person shall be accorded opportunity*

to achieve compliance with all lawful requirements." (underlining supplied.)

* * *

Yet, by the simple expedient of including the word "willfully" in their complaint against me in CEA Docket No. 167—*and without offering proof or determination of willfullness at the hearing,* and by ignoring all testimony and briefs submitted by us to show conclusively that I had not acted willfully—the CEA was able to circumvent the need to follow the required strict procedure of due notice of actual or possible violating of rules as explicitly required by Rule 0.3(c) of the Commodity Exchange Act. In thus abrogating due process of law, the CEA violated my Constitutional rights.

As already mentioned in Sec. "L" supra, I was not permitted argument at the August, 1970 hearing on the issue of willfullness, and was told by the referee that the issue should properly be argued in the form of a brief to be submitted to him after the hearing. Our brief on the issue of willfullness was submitted in December, 1970 and covered the subject in extenso. Yet, it has been completely ignored by the judicial process of the CEA.

At the hearing in August, 1970, I gave extensive testimony and evidence that I not only had not willfully violated the rules of the CEA, but, on the contrary, had offered to take any and all steps they might suggest to assure compliance with the new regulations—this testimony and evidence has remained unchallenged and unrefuted by the CEA. At the same time, the CEA has chosen to completely ignore the plethora of evidence, both legal and factual, already on the record of CEA Docket No. 167, to clearly and logically support our position that we did not willfully, or in any manner, violate the Commodity Exchange Act, as alleged.

I respectfully submit to the Court that this ploy or stratagem on the part of the CEA—that is, by simply inserting the word "willfull" into the complaint against me in order to circumvent Rule 0.3(c)—is not only a violation of my Constitutional rights but also clear indication of the conspiratorial aspects of the acts of CEA officials and personnel in CEA Docket No. 167.

This is a particularly heinous act on the part of the CEA conspirators—for, by such a simple ploy of inserting a single

word in a complaint—they were able to by-pass and negate the wholesome intent of Rule 0.3(c), which is based on the due process concept of our Constitution. Such a rule also is structured firmly into the Administrative Procedure Act —specifically, Section 9(b). For the CEA to take such liberties with the rules are part and parcel of the due process concept entrenched in our Constitution to further an illegal scheme completely unrelated to their duties and functions under the Commodity Exchange Act must be considered, I respectfully submit to the Court, a criminal activity.

Normally and customarily, the CEA is meticulous about observing the letter and spirit of Rule 0.3(c) of the Commodity Exchange Act. From my own experience as a registered commission merchant with the CEA, I customarily expected cooperation from them in *always* supplying proper notice and information of any irregularity in our accounting system and any possible infraction of the rules. I learned to expect such proper notice in the form of a post-audit meeting with auditors and also from notice in writing.

Over and above my personal experience pertaining to customary notice and communications from the CEA it must also be considered that the practice of giving due notice pertaining to infractions or violations is generally customary practice on the part of the CEA, in accordance with Rule 0.3(c).

The following excerpts from the DECISIONS and ORDERS public record files of the CEA offer substantive evidence of the diligence with which the CEA adheres to the requirements of Rule 0.3(c), in calling violations and irregularities to the attention of registrants and affording them an opportunity to bring themselves into compliance and also evidence that such CEA procedure is customary even in cases of flagrant violations of the law and rules and where the public safety and interest may be at stake:

CEA Docket No. 153, Decision and Order, issued by the agency on May 2, 1968, states in part:

> "4. Examination of the respondent's records by the Commodity Exchange Authority as of December 30, 1966, disclosed that on 30 business days between April 29 and July 7, 1966, both inclusive, the respondent was undersegregated in amounts within the range of $49 and $2,101. On February 9, 1967, the Director of the

Accounting and Licensing Division of the Commodity Exchange Authority wrote a letter to the respondent as follows:

'The Commodity Exchange Authority audits the records of firms operating as futures commission merchants. The audits are made to determine compliance with the provisions of the Commodity Exchange Act and related regulations. This letter concerns the audit made of your records as of December 30, 1966.

This law, as you know, regulates futures trading in commodities mentioned in section 2. Section 4d(2) provides standards for handling regulated customer's accounts. With reference to the money, securities, and property received from or accruing to such customers, it provides:

1. They shall be treated as belonging to the customer depositing them.
2. They shall be separately accounted for and not be commingled with those of the commission merchant.
3. They shall not be used to margin the trades of any person except the one for whom held.

This requires that money or property held for customers shall be placed in segregated accounts. The money or property held in such accounts must be sufficient to pay amounts due customers.

Sections 1.23 and 1.32 of the regulations provide for a record of segregated condition. Your records show many failures to keep sufficient funds in segregated accounts. They show under-segregation in thirty business days in the period beginning April 29 through July 7, 1966. The amounts of under-segregation range from $49 to $2,101.

Our representative told you that this under-segregation was a serious failure to comply with the law. This letter is to confirm the audit findings as discussed by our accountant. Also, we wish to afford you an opportunity to achieve compliance.''

• • •

CEA Docket No. 155, Decision and Order, issued by the agency on September 20, 1968, states in part:

"b. Subsequent to the entry of the order in the above-mentioned proceeding and prior to the acts and omissions described in Finding of Fact 3 above, the Commodity Exchange Authority examined the records of the respondent corporation as of June 28, 1957, December 30, 1960, and April 30, 1962, and on each such occasion notified respondent A. H. Myers that the examination had disclosed that the respondent corporation was in an under-segregated condition and discussed the matter with him."

• • •

CEA Docket No. 157, Decision and Order, issued by the agency on January 10, 1969, states in part:

"(4) Prior to the acts and omissions described in paragraph 3 above, examination of the records of the corporation by the Commodity Exchange Authority as of May 31, 1968, revealed that the firm was in an under-segregated condition on various dates in May 1968. On July 9, 1968, the Director of the Authority's Accounting and Licensing Division wrote a letter to respondent James B. Pepper in his capacity as vice-president of the respondent corporation, calling attention to the under-segregated condition of the firm revealed by the Authority's examination of its records as of May 31, 1968, informing him of the requirements of the Commodity Exchange Act relating to the treatment and handling of customers' funds, and affording the firm an opportunity to bring itself into compliance."

• • •

CEA Docket No. 158, Decision and Order, issued by the agency on February 27, 1969, states in part:

"(5) In June 1966, and prior to the acts and omissions described above, examination of the books and records of respondent Sterling Securities, Inc. by the Commodity Exchange Authority disclosed that 11 business days during the period from May 25, 1966 through June 9, 1966, respondent Sterling Securities, Inc. was under-segregated in amounts with the range of $185.25 and $3,111.50, and that 47 business days during the period from April 4, 1966 through June 8, 1966, respondent

Sterling Securities, Inc. had not prepared a daily record of customers' funds required to be held in segregation. These matters were discussed with respondent Paul J. Miller, and on June 23, 1966, the Director of the Accounting and Licensing Division of the Commodity Exchange Authority wrote a letter to respondent Paul J. Miller in his capacity as an officer of the respondent corporation, which letter read as follows:

'A basic purpose of the Commodity Exchange Act is, as you know, to insure that regulated commodity customers' funds are separately accounted for and not used by the commission merchant to finance his own operation, nor may he use one customer's funds to finance the trading of another. In order for the commission merchant and our auditors to determine compliance with these requirements, Section 1.32 of the regulations under the law provides that, as of the close of the market each business day, a computation shall be made of the amount of money, securities, and property which must be placed in segregated accounts to meet the requirements of the act.

On May 10, 1966, your officers discussed the segregation and recordkeeping provisions of the regulations with Mr. G. Edward Piala of our Chicago office. Also, we sent you a leaflet on segregation and accounting procedures when you were registered as a futures commission merchant. For these reasons your responsibilities under the act were known by your management.

Our recent audit disclosed that you were under-segregated in the amount of $2,900.00 on the audit date, May 31, 1966. Also, you were under-segregated on ten other business days from May 25, 1966 through June 9, 1966. Further, you failed to prepare the daily computation of segregation requirements on 47 business days during the period of April 4, 1966 through June 8, 1966.

The purpose of this letter is to inform you that these failures to observe the provisions of the law and regulations are serious and to afford you an opportunity to bring your firm into compliance."

• • •

CEA Docket No. 159, Decision and Order, issued by the agency on March 2, 1970, states in part:

> "As of December 10, 1963, The Siegel Trading Co., Inc., had failed to compute and keep a record as of the close of the market on each of 23 business days from November 5 through December 9, 1963, showing the amount of money, security, and property owing or accruing to its customers in order to comply with the requirements of section 4d(2) of the Commodity Exchange Act. Previous failures to compute and keep such records were discussed with Joseph E. Siegel and Alvin C. Winograd by CEA accountants at various times, and continuing failures were called to the attention of Joseph E. Siegel and The Siegel Trading Co., Inc. by the Act Administrator in a letter dated October 18, 1963."

• • •

CEA Docket No. 166, Decision and Order, issued by the agency on June 12, 1970, states in part:

> "(6) Between June 25, 1968 and August 14, 1969, the Commodity Exchange Authority found it necessary to communicate with the respondent on numerous occasions because of his failure to transmit reports. On September 24, 1969, the Administrator of the Commodity Exchange Authority addressed a letter to the respondent calling attention to his delinquencies in submitting reports, and advising the respondent that he should file all required reports on or before October 10, 1969, and warning him that continued failure to file such reports could result in the institution of administrative proceedings directed toward the denial of trading privileges on all contract markets. Notwithstanding such letter, no reports were filed. In the circumstances, the respondent was aware of his obligations under the Commodity Exchange Act and regulations with respect to the filing of reports."

• • •

CEA Docket No. 171, Decision and Order, issued by the agency on June 16, 1970, states in part:

> "5. During the period from August 1 through September 30, 1969, the respondent corporation failed to prepare and maintain a monthly computation of its net worth, as required by section 1.10 of the regulations issued under the Commodity Exchange Act (34 F. R. 599). Prior to September 30, 1969, examination of the books and records of Roberts, Lane & Co., a predecessor firm to the corporate respondent, by the Commodity Exchange Authority as of March 28, 1969, disclosed that the said firm was not preparing and maintaining such a computation and this failure was called to the attention of the firm in writing on August 20, 1969, and to the attention of respondent George C. Lane in a letter dated August 25, 1969."

• • •

CEA Docket No. 172, Decision and Order, issued by the agency on September 16, 1970, states in part:

> "5. On numerous occasions dating as far back as March 18, 1969, and continuing up to January 23, 1970, officials of the Commodity Exchange Authority not only informed the respondent of the reporting requirements under the Commodity Exchange Act and regulations with respect to live cattle futures, but also found it necessary to communicate with the respondent in writing directing attention to the respondent's failure to file required reports . . ."

• • •

CEA Docket No. 178, Decision and Order, issued by the agency on August 25, 1971, states in part:

> "(b) During the period between June 5 and June 11, 1970, both inclusive, the respondent corporation was continuously under-segregated in amounts ranging from $137,014 on June 10, 1970, to $260,134 on June 11, 1970, that is, throughout the period mentioned the total amount of customers' funds held in segregation as above described, was from $137,014 to $260,134 less than the amount necessary to pay all credits and equities due to each customer.
>
> (c) Under the regulations issued pursuant to the Commodity Exchange Act the respondent corporation was obligated at all times material herein to prepare and maintain a daily computation and record setting forth

the amount of money, securities and property of its customers required to be held, and held, in segregated accounts in accordance with the requirements of section 4d(2) of the Commodity Exchange Act (7 U.S.C. 6d(2)). On numerous days during the period between August 13 and December 31, 1970, both inclusive, the daily computation and record that was prepared and kept by the respondent corporation to meet the requirements of the regulations contained errors which resulted in gross misstatements of the amount of customers' money, securities and property held in segregation.

3. Examination of the records of respondent Dean Witter & Co., Incorporated, by the Commodity Exchange Authority as of November 30, 1968, and examination of the records of Dean Witter & Co., the respondent corporation's predecessor partnership, as of March 31, 1966 and February 27, 1967, disclosed that the corporation and its predecessor partnership had not satisfactorily complied with the requirements of the Commodity Exchange Act and the regulations thereunder relating to the handling of customers' funds and to the preparation and maintenance of records in connection thereto. These matters were called to the attention of the corporation and to its predecessor partnership in writing by T. Reed McMinn, Director of the Commodity Exchange Authority's Eastern Region, on July 18, 1966, May 2, 1967 and April 24, 1969.

• • •

CEA Docket No. 179, Decision and Order, issued by the agency on October 29, 1971, states in part:

4. Having reason to believe that the respondent corporation was not meeting the minimum financial requirements prescribed in section 1.17 of the regulations under the Commodity Exchange Act, T. Reed McMinn, Director of the Commodity Exchange Authority's Eastern Region, on January 20, 1970, warned the corporation in writing as follows: "It is your firm's responsibility at all times to meet the financial requirements. . ." prescribed in section 1.17. To correct the working capital insufficiency at the time, respondent Fullerton on or about February 13, 1970, loaned the

corporate respondent $100,000 and subordinated the loan to the claims of the other general creditors.

• • •

CEA Docket No. 182, Decision and Order, issued by the agency on November 1, 1971, states in part:

7. On numerous occasions dating as far back as 1953 and continuing up to April, 1967, officials of the Commodity Exchange Authority not only informed the respondent of his responsibilities under the Commodity Exchange Act and regulations with respect to speculative trading and position limits and reporting requirements, but also found it necessary to communicate with the respondent in writing directing attention to his failure to observe such limits and file the required reports.

• • •

The above cited cases indicate the great care which the CEA normally employs in observing the due process concept that is explicitly set forth in Section 0.3(c) of the CEA rules and regulations. I respectfully point out to the Court that in all of the above cited cases, actual violations of the rules had occurred, and in some instances, the violations were flagrant and represented serious operational deficiencies which posed a real threat to the public safety and interest. Yet, the CEA was extremely careful to afford the violators, through notice, verbally and in writing, the opportunity to bring themselves into compliance.

In one of the above cited instances, the deficiency in operational capital was $100,000.00—yet the organization was allowed the opportunity to bring itself into compliance, through proper oral and written notice.

In our case, however, we were never even notified that we might be in possible violation of Rule 1.17—all we knew was that the CEA auditor, Fitzpatrick, and I had heated arguments as to the proper documentation of our assets and that some form of determination or guideline would be forthcoming from Washington, should any changes be required. In the absence of such determination or guidelines from Washington and the lack of a specific post-audit report from Fitzpatrick to the contrary, we rightfully assumed that our assets were acceptable—otherwise we would have been told.

In order that the Court may fully appreciate the general

and specific facts that we have set forth in CEA Docket No. 167 to support our position that we did not act willfully, I set forth below said facts in our defense and call to the attention of the Court that these facts have not been contested or disputed at any time by the CEA, itself:

A) We were not told at any time after the April/May Fitzpatrick audit that our documentation of the assets was such as to render our assets invalid under the new rules.

B) There were numerous heated arguments between Fitzpatrick and me, and I was told that the issues were being referred to Washington for analysis and determination and that I would be informed about the result.

C) I repeatedly told Fitzpatrick to simply let me know what was decided by the CEA and I would personally advance cash, if necessary, to convert any disputed assets into liquid form.

D) I repeatedly told the CEA that there was no need to wrangle over any of the assets—for we had decided to terminate our Supervised Trading Programs and could readily reclassify into Section 1.31a, which has no minimum financial requirements for its registrants.

E) Our situation posed no danger or threat in any form to the public. We had a perfect record of integrity over the year of handling customers' funds. We even had a perfect record in the handling of about 400 customers' accounts from 1960 through 1969 which were non-regulated, were not subject to CEA rules, and which funds were commingled with our own corporate funds, as is customary and legal in the handling of non-regulated accounts.

F) Rule 1.17 pertaining to minimum financial requirements was brand-new, in effect only a few weeks. Even the CEA itself had difficulty in interpreting it. McMinn, the New York CEA regional administrator told me, and I so testified at the hearing, that the CEA itself had to ask the help of the American Association of Certified Public Accountants in interpreting the rules.

G) Fitzpatrick, at the conclusion of the April/May audit, did not hold a post-audit interview or meeting with me, which is customary practice and procedure, to enlighten me as to the latest interpretation or determination from Washington. He simply left these various questions "in the air."

H) A number of times, in the attempt to put an end to

the Fitzpatrick harassment and vituperation, I said, "For heaven's sake, just tell me what you want me to do and I will do it!"

In light of the foregoing, a number of conclusions may be drawn, I respectfully submit.

First, we did not willfully violate any rule of the CEA.

Secondly, we were not afforded customary due notice regarding any possible or actual violation, such due notice being our Constitutional right and explicitly spelled out under Sec. 0.3(c) of the CEA rules.

Thirdly, in not being afforded due notice, such as is customarily given freely and repeatedly, as cited from the CEA public record in the earlier portion of this Section, I have clearly been discriminated against. Such discrimination by the CEA, in not offering me the same consideration given to even the most flagrant violators of the rules, is a violation of still another of my Constitutional rights—that of equal treatment under the law.

I should like to mention that the cases I have cited in this Section all involve firms which were afforded proper due notice but failed to bring themselves into compliance, thus necessitating a CEA complaint against them. I asked the CEA national administrator how many firms and individuals during the past five years *had responded to due notice of possible or actual violations by bringing themselves into compliance.* I was told that I could not have that information, as it would be a *massive undertaking* to research it. (underlining mine)

I should also like to call to the Court's attention an additional issues of law pertaining to willfullness which is interwoven in CEA Docket No. 167. It is as follows:

The CEA amended complaint, issued in June, 1970, was issued under Section 6(b) of the Commodity Exchange Act, the applicable part of which states that the Secretary of Agriculture may issue a complaint if he has reason to believe that a person had willfully made any false or misleading statement of a *material fact* in any registration application or any report filed with the Secretary . . . "(underlining supplied).

I respectfully submit to the Court, in light of the facts A), B), C), D), E), F), G), and H) set forth above, I most assuredly did not willfully make any false or misleading

statements of *material fact* in any registration application or any report filed with the Secretary, as nominalistically alleged by the CEA.

Significantly, I should like to point out to the Court, the CEA made no attempt at the hearing or in its brief to set forth any facts that would prove that I had willfully made any false or misleading statement of *material fact* in our registration application and reports filed with the Secretary.

There are other ramifications of the issue of willfullness which emerge upon close study of the record to date of CEA Docket No. 167, to which, I respectfully submit, the Court may wish to attend, from the standpoint of law. The first of these ramifications is the fact that the CEA made no attempt in its pleadings or at the hearing, or in its two briefs filed subsequent to the hearing, to offer evidence or proof of any kind that I acted willfully. It simply alleges that I so acted, then is content to play around with definitions. In the definition game, the referee also plays a part—actually he zeroes in with two definitions—one relatively simple, which he ties to the Administrative Procedure Act, and which he gave at the hearing, the other an incomplete and distorted version of a Supreme Court ruling on the issue of willfullness. This latter definition is derived directly from the CEA prosecution's brief, which the referee photo-copied and presented as "his" "referee's report."

The referee's initial definition of willfullness was given at the hearing as being "what the Administrative Procedure Act says it means . . . something done deliberately . . ." At the hearing, significantly, the CEA prosecuting attorney offered no comment of his own, even though early in the hearing he had stated that the government would go into the matter of willfullness, but he did not follow through on his promise.

The CEA prosecuting attorney's brief filed in October, 1970, touched upon the subject with a few general remarks, plus an incomplete and extremely misleading quotation from a Supreme Court decision. In my brief, filed in December, 1970, I called attention to this misleading quotation and developed the subject in extenso in a section of my own brief which was devoted to the subject of willfullness.

In the CEA prosecuting attorney's reply brief filed in February, 1971, he makes no attempt whatever to refute my analysis of willfullness, makes no attempt to defend, or

repair, his demolished position with reference to his incomplete and misleading Supreme Court excerpt. Instead, he replaces the Supreme Court with two "authorities" on the subject—none other than the CEA's very own referee and the CEA's judicial officer. These two "authorities" have a common definition for "willfullness." It means "anything done deliberately, irrespective of motive or intent."

Simply spewing allegations of willfullness and various definitions of willfullness, irrespective of whether the definitions are sound or unsound, complete or incomplete, valid or invalid, does not constitute proof that I acted willfully in any way.

As stated elsewhere in this and other sections of this affidavit, by the simple expedient of inserting the word "willfully" into the life stream of CEA Docket No. 167, the CEA was able to proceed with its plan of abrogating the need for due notice to me, as explicitly required by Section 0.3(c) of their rules, and, more importantly, as required by the due process concept in our nation's laws and, above all, in our Constitution.

May I ask the Court whether such procedure—the abrogation of the broad and substantive concept of due process of law by the simple expediency of inserting a simple word, "willfull," into a complaint, without substantiation, was intended by Congress to be used as a standard mode of procedure by an administrative agency; whether, indeed, an agency thus acting has not transcended its area of duty and legal scope and purpose altogether?

• • •

"P"

Extensive Pattern of CEA Falsifications

One of the pillars of our defense in CEA Docket No. 167, which, owing to the monolithic structure and modus operandi of the CEA assault, I have been unable to surface on the record, is as follows: *Only,* through illegal and surreptitious acts, misrepresentations and falsifications has the CEA been able to structure the CEA Docket No. 167 record in such a manner as to make it appear that we have violated their rules. *Only* by breaking the law, by falsifying facts and figures, by manufacturing "evidence," by depriving me of due process of law and by violating my Constitutional

rights has the CEA been able to structure its "case." In simple and basic terms, this was a "frame up," an organized effort to "railroad" me and The American Board of Trade to oblivion.

It is our position, too, that if the CEA had acted as they should have, and are required by law to act, in a responsible, straightforward, lawful manner, it would have been impossible for them to have found us wanting in any manner—financially or morally—and most assuredly not wanting in our financial responsibility to our customers.

If the CEA had acted in a normal manner vis-a-vis me and my companies—rather than in a manner reminiscent of the Gestapo methods of the 1930s—the groundwork could not possibly have been laid for a complaint against us. If, in normal procedure and straightforward manner, they had outlined the requirements of their brand-new Rule 1.17, I would have responded promptly and constructively. I have always been fully cooperative in my relationship with the CEA and other government agencies. If they had as much as expressed an iota of interest in solving the "problem" of the documentation of the assets, the "problem" would have no longer existed.

The CEA represents an administrative arm of our government and, like all other agencies, is provided with the required and necessary "tools" of law and personnel with which to accomplish their lawful purposes. They have the tools, in other words, with which to carry on their function in a normal, constructive manner. It is not necessary, or desirable, or legal for an agency to lie, to cheat, to falsify records, to mislead, to "frame" a victim, to make use of "hatchet men," in the form of auditors who "find" or "do not find," or actually manufacture "evidence," in accordance with the requirements of the "job" at hand.

However, the CEA objective in CEA Docket No. 167 was not to ascertain the truths regarding the documentation of our assets, but rather to engineer the downfall of one of their critics and also to vitiate, and, if possible, destroy, a new exchange and marketplace.

The following is a list of specific falsifications, lies, distortions and illegal acts which the CEA officials and personnel committed in their organized conspiracy to destroy me and, through me, The American Board of Trade. The following, singly and collectively, represent illegal acts on

the part of CEA officials and personnel which were in violation of my basic rights as a citizen and in violation of all normal standards of ethics and morality.

1) Clement Gross, CEA auditor, surreptitiously falsified facts and figures on our books and records in the interest of the conspiracy.

2) Clement Gross, CEA auditor, lied under oath, as a CEA witness at the hearing in August, 1970.

3) CEA officials induced and approved the Gross falsification of our financial records.

4) CEA officials incorporated the falsified Gross figures in the amended complaint, which, in turn showed a false picture of financial deterioration in my company.

5) Gross and Kirchhoff, deputy director of the CEA, under oath at the hearing, and Bain, referee, in his "referee's report" all lied in stating that the reserve account on our books, manipulated and falsified by Gross into an account payable, met the definition of a current liability in Section 1.17(d)(3) of the regulations under the Commodity Exchange Act.

6) The referee's recommendation in his August, 1971 "referee's report" that the registration of Arthur N. Economou & Co., Inc., as a futures commission merchant be suspended for 90 days is a falsification of the record. Said sanction could not be imposed, in that we resigned as commission merchant in December, 1970.

7) The referee's recommendation in his August, 1971 "referee's report" that I and Arthur N. Economou & Co., Inc. be denied all trading privileges on all markets subject to CEA rules for a period of 90 days is a falsification of the record of CEA Docket No. 167. He knew that I ceased trading in CEA-supervised markets in October, 1969 and resigned as commission merchant under the CEA in December, 1970—in protest and disapproval of the manner in which the CEA allows trading to be conducted on the exchanges.

8) The referee falsified the record in CEA Docket No. 167 by allowing an incomplete and misleading quotation to be presented in his "referee's report" of August, 1971. The misquotation, and the misleading implications of the quotation, appeared in the CEA prosecution brief of October, 1970 and was called to the referee's attention in our brief of December, 1970.

9) Fitzpatrick, CEA auditor, lied under oath, when

testifying as a CEA witness at the hearing in August, 1970.

10) Fitzpatrick falsified the record when he testified at the hearing in August, 1970 that his April/May, 1969 audit was for the purpose of determining the "validity" of our assets. The purpose of his audit, by direction of his superiors, was to lay the groundwork for a subsequent "determination" that the assets were not valid, irrespective of the facts.

11) The allegation by the CEA that I acted "willfully" is a deliberate falsification in CEA Docket No. 167, as more fully set forth under Section "O"—"Substantive Issues of Willfullness and Due Process"—in this affidavit.

12) CEA officials at three group meetings in the CEA national administrator's office deliberately and cogently referred to The American Board of Trade as a "bucket shop"—a falsification of the operational features of this new exchange and marketplace.

13) The CEA national administrator, in a letter to me, stated that the purpose of my three 1970 visits to his office was to discuss registration of The American Board of Trade under the Commodity Exchange Act. This is a lie on the part of the CEA national administrator.

14) In his reply brief of February, 1971, Davis, the CEA prosecution attorney, misrepresented the facts relative to two post-audit interviews conducted by CEA auditors. In addition, he also manufactured a non-existent post-audit Fitzpatrick interview.

15) Assistant secretary of agriculture, Lyng, told what is, at best, a half-truth by stating in a letter to me that the Secretary of Agriculture could not make rulings to encompass the innovative features of the new exchange when, in fact, Congress had specifically empowered the Secretary of Agriculture to make rules to implement the objectives of the Act.

16) The CEA hierarchy conveyed fabricated, distorted and untrue information to the U. S. Securities and Exchange Commission in late-1969/early-1970, to induce the SEC to institute injunctive proceedings against the Precious Metals Syndicate.

17) The CEA hierarchy conveyed fabricated, distorted and untrue information to the U. S. Securities and Exchange Commission in late-1970/early-1971 relative to The

American Board of Trade, to induce the SEC to adopt a position of animus and suspicion toward the new exchange.

18) CEA prosecuting attorney Davis, in his October, 1970 brief, and referee Bain, in his "referee's report," falsified the CEA Docket No. 167 record by setting forth a personal attack on my character and my personal and financial integrity, which is contradicted by all the acknowledged facts—whereas . . .

19) at the August, 1970 hearing, Davis specifically stated that the government would not contest my impeccable and exemplary business background that I had placed on the record in my pleadings prior to and at the hearing, which statement by Davis was proved by his attack on me in his brief to be a lie.

20) The CEA national administrator lied to persons who inquired about the ABT, when he answered such inquiries by mailing a copy of the amended complaint, representing the complaint as "all we have on file," when, at the time, the CEA office also had on file our Answer to the complaint denying the allegations, copies of our petition to the Secretary of Agriculture, our briefs setting forth our defense, and our record of impeccable business conduct under their jurisdiction.

21) The CEA procedure of mailing only copies of the complaint or amended complaint to interested persons who inquired about the ABT, without also mailing copies of our Answer on file denying the allegations and setting forth our defense, is a falsification of the record of CEA Docket No. 167.

• • •

"Q"

Substantial Damage Inflicted
Upon me by the CEA

The CEA, through the framework of the complaint procedure in CEA Docket No. 167, and its conspiratorial acts attendant thereto, has inflicted heavy and cruel damage upon me these past two years, physically, financially, and mentally.

My business record of 17 years of impeccable and unblemished business dealings with thousands of persons in the financial world has now been undeservedly blackened by

the CEA action—in effect, negating my reputation for honesty, integrity and soundness of business character that I so carefully cultivated throughout the years.

The CEA blow was particularly vicious in its effects upon me, in that it was timed by the CEA to fall at a critical juncture in my career, whereby I had phased out from the CEA-regulated activities of my Supervised Trading Programs and had started to phase into new activities encompassing The American Board of Trade, the Trading Syndicates and The Economou Financial & Development Corp. I relied heavily upon my years of constructive and unblemished relationship with the financial community to attract the thousands of investors and the millions of dollars in equity financing participation in the various enterprises and trading syndicates that I launched into reality in 1968 and 1969.

The physical and mental effort required to hold the CEA monolithic juggernaught at bay required many hundreds of hours of my time—thus depriving my enterprises of these same hundreds of hours of concentrated effort which would bring to them the creative attention they sorely needed in their formative stages.

The damage which the CEA inflicted upon me was particularly vicious in that the black cloud that engulfed me was continually reinforced through the acts of the CEA. The timing of the amended complaint by the CEA to coincide with the announcement of our $300,000.00 EF&D stock issue is an example at point. The mailing of the complaint and amended complaint to interested persons and credit agencies, without also mailing copies of our answer, is still another example of effective anti-Economou devices used by the CEA. The "bucket shop" label, applied verbally to the ABT at group meetings in the national administrator's office, was transformed into anti-Economou and anti-ABT rumors in the financial field. One of our ABT customers phoned frantically to find out if it was true that "Mr. Economou has been indicted by the CEA in Chicago"—a wild rumor that apparently had been passed on to him by one of the customers' men of a brokerage house.

The black cloud that the CEA cast over me, through its conspiratorial acts, has permeated and adversely affected my relationship with four basic areas of the financial field:

1) *The investing and trading public,* which is subject to rumors and erroneous subjective value judgments as to our financial standing and has shown hesitancy and timidity at best, and outright hostility at worst, with regard to entering into business relationships with my various organizations, particularly The American Board of Trade.

2) *The financial community* has expressed broad interest in the unique conceptual and operational features of The American Board of Trade, yet refuses to participate actively while the cloud of a government action hangs over us. To date, we have received over 900 requests for information regarding memberships on the ABT, yet only 5 memberships have been sold. We have received numerous cancellations of membership applications, after they were submitted, because prospective members invariably discuss their plans with others and soon learn of the CEA action against us.

3) *The financial press* has been negatively influenced because of our "legal" problems with the CEA. The press has acted in a cool manner, non-receptive to any explanations that I have tried to offer. We have been pointedly ignored.

4) *The U. S. Securities and Exchange Commission* has been improperly and negatively influenced into an attitude of animus against the ABT by direct and indirect acts of the CEA. Thus the CEA has adversely affected our relationships with the SEC and completely blocked our plans to register under the Securities Exchange Act of 1934 which adversely affected membership sales.

The CEA Docket No. 167 has caused substantial damage to each of the organizations which I created and launched in recent years. More specifically:

A) The American Board of Trade exchange and marketplace complex has been completely stymied in attracting members and developing sales of its broker/dealer franchises; it has been stymied in its plans for the development of a broad sales program; and it has been stymied in its plans for public equity financing. Only through the dint of determined, unrelenting day-and-night effort on my part and on the part of Mrs. Economou, who has been working side by side with me, have I been able to get the ABT off the ground these past two years and maintain its viability.

B) My two Trading Syndicates upon which I had planned for income and revenue after I had relinquished my Super-

vised Trading Programs in July, 1969, have not fulfilled their role in our plans. One is alive, but not fulfilling expectation; the second has been unable to get off the ground.

C) Arthur N. Economou & Co., Inc., which had been expected to contribute substantially to our financial income and revenues in its role as broker for the two Trading Syndicates, has been unable to contribute as planned to our cash flow and our financial picture, owing to the inactivity of the two Trading Syndicates.

D) The Economou Financial & Development Corp. similarly has been affected by the CEA action. It too, has been unable to attract a public following and the sale of its stock issue quickly came to an end, for the issuance of the CEA amended complaint in June, 1970 was timed by the CEA to coincide with the announcement of the EF&D stock issue in the amount of $300,000.00 which was intended to provide the "seed money" to launc hthe initial developmental stages of the ABT complex.

E) The American Board of Trade and I have lost our substantial competitive advantage in the exchange community. The unique conceptual and operational features of the ABT, which formed a basis for our direct competitive challenge to the present commodity and securities exchanges, are being openly proposed by these same exchanges and other segments of the financial community. Meantime, The American Board of Trade and I sit on the sidelines unable to participate in the changing scene, whereas we should rightfully be active and instrumental in leading the way. The various exchanges are reinforcing their positions at three high-level hearings and studies currently underway in Washington devoted to the problems of our nation's exchanges and the securities industry. These hearings and studies are being conducted by Senator Williams, Representative Moss, and Mr. Casey of the U. S. Securities and Exchange Commission. Spokesmen for the community and private citizens have testified at these hearings, each, in effect, opting for constructive change and presenting their ideas in detail at the hearings. I, on the other hand, remain on the sidelines in "disgrace," for I do not wish to embarrass the Chairmen of these hearings and myself by bringing my plight to their attention.

Thus we've been left far behind by a community that for the first time in its history is making efforts to restructure

itself constructively and, in so doing, adopting several of our concepts and strengthening the weak elements in their conceptual and operational patterns. The American Board of Trade and I, however, are unable to aggressively implement even our most basic measures—in fact, I have found that it is difficult to even communicate with the financial public and community, for none wishes to get involved with a new exchange that is enveloped within a complaint procedure with a government agency, irrespective of who is right or who is wrong.

F) Owing to the burden of extra work that I was forced to undertake to combat the CEA assault these past two years, and to the decrease in personal efficiency attendant thereto, I have been unable to function effectively in my roles as president of The American Association of Commodity Traders and as editor of the "Commodity Journal." As a result, the affairs of the Association have suffered from the lack of sufficient and proper attention. There have been no seminars or meetings of the Association held during 1970 and 1971; and in each of these years, only four issues of the "Commodity Journal" have been published, instead of the usual 6 bi-monthly issues per year. The inefficiency of the management of the Association has become apparent to members, complaints and resignations have been forthcoming, and such state of affairs, which I have been unable to remedy, has resulted in loss of reputation and prestige and has been a source of great mental anguish to me.

• • •

"P"

Judicial Officer Now
Joins the Conspiracy

On November 4, 1971, I filed our exceptions to the referee's report and at the same time requested oral argument before the Secretary and declared intention to file briefs in addition to oral argument, as is our right under Section 0.19 of the rules and regulations of the Commodity Exchange Act, which reads as follows:

• • •

Section 0.19 Argument before Secretary

(a) Oral argument. Unless a party has included in his exceptions a request for oral argument or has filed

a separate request for oral argument prior to the expiration of the last date for filing such exceptions, he shall be deemed to have waived his right to such oral argument.

(b) Briefs. The parties may file written briefs either in addition to oral argument or in lieu thereof.

(c) Scope of argument. Except where the Secretary determines that argument on additional issues would be helpful, argument, whether oral or on brief, shall be limited to the issues raised by the exceptions and statement of objections. If the Secretary determines that additional issues should be argued, counsel for the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate argument on all the issues to be argued."

* * *

The Secretary of Agriculture is represented at this juncture of the CEA Docket No. 167 by the judicial officer of the U. S. Department of Agriculture. He has received the so-called "referee's report," and now that we have filed exceptions to the photo-copies of the prosecution's brief, which the referee submitted as "his report," the judicial officer is to evaluate our exceptions, hear oral argument thereon and appraise the briefs which we have advised we will file.

After filing of our exceptions to the referee's report, we petitioned the Secretary of Agriculture for a 60-day moratorium, to allow me time to prepare the pleadings in the instant action for the purpose of asking the U. S. District Court for intervention and protection in CEA Docket No. 167.

On November 30, 1971, in response to my request for a 60-day moratorium, the judicial officer granted our petition, stating that oral argument would not be held prior to February 1, 1972. At the same time, the judicial officer noted that the CEA prosecuting attorney did not object to the request "since it does not appear that further prolongation of this proceeding will adversely affect third parties."

In the same communication, the judicial officer also stated: "Leave is granted to the respondents to file an additional brief on or before February 1, 1972, *** No briefs will be permitted after oral arguments unless the

Judicial officer, at the oral argument, specifically requests further briefs."

I respectfully call to the Court's attention that the only rule to govern the judicial officer's procedure with reference to the oral argument and the briefs which may be filed *in addition thereto* is under Section 0.19, as set forth above.

No aspect, explicit or implicit, of Rule 0.19 requires or suggests that we file a brief *prior to oral argument,* and we did not request an opportunity to file such a brief. This gratuitous gesture by the referee is actually a two-pronged ploy which permits him to reinforce the monolithic structure of the CEA's planned and programmed conspiracy to find Economou "guilty as charged."

Specifically, the brief that he has granted us "leave" to file, a brief that I did not request to file and for which Section 0.19 does not provide, would serve as a "working guide" for the judicial officer and the prosecution staff of the CEA to program the scheduled oral argument in such a manner as to impede and obstruct any presentation that I would make. This was the modus operandi that the referee and the CEA prosecuting attorney used at the hearing, after I had filed, as requested, a full and detailed answer to the amended complaint, to obstruct my presentations and even rule in advance as to what I would not be allowed to present as a part of my defense.

Furthermore, although it would offer the CEA monolith, through the judicial officer, a decided advantage if I were to file a detailed brief prior to oral argument, it could in no way be of benefit to my defense. I have filed voluminous briefs during the course of the CEA proceedings covering almost every conceivable aspect, yet not one issue that I filed in our defense in Docket No. 167 has received consideration. To what purpose would I file an additional brief into this judicial void? On what subject would I file an additional brief prior to oral argument?

I submit that this "invitation" to file an additional brief is simply a judicial maneuver to accomplish a two-fold purpose: 1) To elicit my planned approach to the oral argument, and 2) to deprive me of my right to file a brief *subsequent* to oral argument, as provided in Section 0.19(b) of the rules which states: "The parties may file written briefs *in addition to oral argument* or in lieu thereof." (Underlining supplied.)

The Webster unabridged dictionary defines "addition," as "The result of adding; anything added; augmentation," and the prepositional clause, "In addition to," as "over and above." One does not "add to" that which does not yet exist.

For the judicial officer to deny or restrict me the right to file meaningful briefs after, or in addition to, oral argument, as specifically provided under Rule 0.19(b), relative to our exceptions to the referee's report, but to grant me "permission" to file an unwanted, unneeded and harmful brief prior to oral argument, is a violation of my rights as a respondent in CEA Docket No. 167.

Denying us the right to file briefs in addition to oral argument, as provided in the rules, also would deny us the right to comment upon and discuss the oral argument procedure, itself. This would allow the judicial officer to do as he pleased with respect to any portion of my presentation, to structure the record as he pleased—knowing that I would not have the opportunity to subsequently file a brief setting forth my commentary on the proceeding, and rebuttal.

There is still another area of judicial interest involved relative to the forthcoming oral argument before the judicial officer, the purpose of which is for me, as respondent, to present argument pertaining to our exceptions to the "referee's report."

Such oral argument cannot be considered meaningful in any sense of the term, for, by completely ignoring the issues we raised in our defense, the referee's report becomes a meaningless document, devoid of judicial significance, in that it makes no attempt to appraise and to synthesize the issues set forth by both parties in CEA Docket No. 167. By its very nature, it has deprived us of an opportunity to offer full, meaningful oral argument before the judicial officer. The issues of fact and law *have not been processed and synthesized by the referee* for presentation to the judicial officer, and to us, in a manner that would permit meaningful oral argument pertaining to either our exceptions to the referee's report, or to the overall CEA Docket No. 167.

In effect, then, I have been denied *all* opportunity for meaningful and adequate oral argument, not only relative to our exceptions to the "referee's report," but also as

regards the overall scenario of CEA Docket No. 167, owing to 1) the referee not allowing oral argument at the hearing, and to 2) the lop-sidedness and arbitrariness of the "referee's report." Not only did the "referee's report" violate the spirit and letter of the meaning and intent of a referee's report, as set forth under Section 0.2(n) of the rules, but said "referee's report" also effectively negated the requirement of Section 0.10(f) of the rules with reference to adequate oral argument at or subsequent to the hearing. Section 0.10(f) states:

• • •

> (f) Oral argument before referee. In disciplinary proceedings, oral argument before the referee shall be allowed unless the referee finds that the denial of such argument will not deprive the parties of an adequate opportunity for oral argument *subsequently* in the proceeding."

• • •

I was not allowed opportunity for oral argument at the hearing on any of the basic areas of our defense, including the issues of willfullness, deprivation of due process, entrapment, falsification of our records, and the pattern of maliciousness and illegal acts on the part of the CEA. Furthermore, it is now impossible for us to offer adequate oral argument on these issues, for the referee failed to synthesize and blend our pleadings, our testimony at the hearing and our briefs into his report, as specifically required by law. Thus we have been completely deprived of an opportunity for adequate oral argument in the entire proceeding. Even if we were to be heard at this juncture of CEA Docket No. 167, such opportunity for oral argument could not be deemed adequate, for the issues of fact and law presented by *both* parties have not been appraised, processed and synthesized by the referee, as required by law, *to permit adequate oral argument to be developed thereon.*

Nor can the judicial officer now properly evaluate, weigh and balance the entire record, for fruitful dialectic and synthesis of the issues of fact and law have not been developed or performed by the referee, as required by law, and as is essential if proper evaluation of the entire record is to be made.

Under these circumstances, the judicial officer has no choice but to be governed "by the record" as it stands—a

record programmed and contrived to assure that we are found "guilty as charged." The judicial officer's part in the conspiracy has thus been made relatively simple by the CEA auditors, the prosecuting attorney and the referee, who preceded him in the processing of the record for the purpose of achieving the predetermined objectives. All the judicial officer can do now is look at the programmed record and report what he sees.

What the judicial officer cannot see is the overall schematism of facts and law which constitutes our vigorous and effective defense against all the CEA allegations in CEA Docket No. 167, but which defense, owing to the conspiratorial nature of the CEA assault, was not allowed to surface on the record.

What the judicial officer cannot see is the overall sustained pattern of illegal acts committed by the CEA hierarchy and employees since April, 1969, which actually exists, but which pattern, owing to the conspiratorial nature of the CEA attack, was not allowed to surface on the record.

What the judicial officer cannot see and cannot be expected to consider and rule upon is that his fellow officers and employees of the U. S. Department of Agriculture and the Commodity Exchange Authority contrived to destroy, and succeeded in inflicting heavy damage upon, a citizen and his organizations, because said citizen has the courage not only to severely criticize the traditional exchange system, but also to propose and implement activity patterns designed to remedy the dysfunctions which are against the public interest.

That is why I am asking the Court to intervene at this juncture and assume jurisdiction of CEA Docket No. 167, for the CEA has forfeited its right and is no longer qualified, pragmatically, morally or judicially, to further appraise the issues involved in or to make any further determinations, rulings or decisions relative to CEA Docket No. 167.

• • •

"S"

Irreparable Harm and Damage Now Impends

As set forth in Section "R"—"The Judicial Officer Now Joins the Conspiracy"—of this affidavit, the judicial officer, based on the contrived and programmed record of CEA

Docket No. 167, has no choice but to carry out the pre-determined objective of the CEA Docket No. 167, to find me "guilty as charged." Through such a "finding," the CEA will inflict irreparable damage and harm upon me and my interests in the organizations which I created and head in the commodity and financial field.

The injustice of such an inevitable decision on the part of the judicial officer is aggravated by the fact that it is based not only on an improper, unbalanced and unfair record of the issues of fact and law, but also that the CEA has forfeited its right and is no longer qualified, practically, ethically, or legally, to make any further determination, rulings or decisions relative to the CEA Docket No. 167, as more fully set forth in Section "R" of this affidavit.

The charge of underfinancing, as set forth in the amended complaint, and the "finding" of an underfinanced condition that would ensue from the judicial officer's inevitable "guilty" verdict, would represent an incorrect, unjust and highly detrimental version of the issues that the CEA contrived to structure into the complaint and the amended complaint. At worst, the issues, as contrived by the CEA, were whether or not our assets were properly documented. There has never been a question in CEA Docket No. 167 as to whether the assets were there. Yet, the charge on the public record is one of "underfinancing," with the incorrect and damaging implication that we were deficient in assets.

Still another unfair, unjustified, erroneous and highly damaging implication of the inevitable verdict of "guilty as charged" by the judicial officer would be that the public's funds had been endangered and that the public's safety and health were involved. There no longer existed an investing public to be "damaged" by any alleged improper documentation of our assets, or to be "protected" by this CEA action, as we were completing the process of closing all customers' accounts.

The investing public, however, is highly sensitive to such implications, owing to the widely publicized adverse developments among brokerage firms in recent years, in which many thousands of investors suffered monetary loss because of the deteriorated financial positions of the brokerage firms and even fraudulent operational practices on Wall Street.

Also implicit in the inevitable verdict of "guilty as

charged'' by the judicial officer would be a confirmation of the highly damaging, but falsified, figures in the CEA amended complaint which falsely indicated that our financial position as of March 31, 1970, was deteriorating at the rate of $4,000.00 per month. This one reason alone, I respectfully submit, should be sufficient to induce the Court to assume jurisdiction in CEA Docket No. 167 and prevent the irreparable harm that would be inflicted upon me if the CEA judicial officer is now allowed to publicly ''verify'' the CEA's fictitious allegations.

The allegations of the CEA, in the form of the amended complaint issued in June, 1970, incorporating CEA falsified figures, plus the continuous pressures of other illegal acts on the part of the CEA, as set forth in other Sections of this affidavit, were sufficient to inflict substantial damage upon me and my interests in the eight organizations which I created, launched and head, as more fully set forth in Section ''Q''—''Substantial Damage Inflicted Upon Me by the CEA.'' My personal reputation, which I have carefully cultivated through the years by irreproachable conduct, has also suffered serious discredit and is gravely tarnished as a result of the CEA conspiracy over these past two or more years.

Now, however, my reputation, which up until the CEA launched its unwarranted attack upon me in 1970 was unmarred and unblemished, and upon which I so greatly relied to attract the public following necessary to implement my new ventures and enterprises in the commodity and financial fields, is now threatened with complete destruction and irreparable damage if the judicial officer of the CEA is allowed to take the final step necessary to achieve this predetermined objective of the CEA conspiracy by pronouncing me ''guilty as charged.''

This unblemished business and personal reputation, which is a most precious and prized asset in the commodity and financial fields, wherein complaints, fines, sanctions, suspensions, revocations, etc., are practically a common denominator, represents the base on which I could reasonably expect to attract the following of thousands of investors who would participate with confidence in the various enterprises and activities which I created.

Yet this reputation, this sturdy platform of support for

my various enterprises, will now be ruined and destroyed by the inevitable verdict of ''guilty'' which looms directly ahead, despite the fact that I am innocent of wrongdoing in any form in relation to the rules and regulations of the CEA. Quite the contrary, the destruction of my reputation will have been brought about by a group of men in the CEA, shamefully masquerading within a framework of lies as an agency ''doing its duty,'' who deliberately set out in 1969 to bring about my downfall.

I earnestly request the Court not to allow this group of men to inflict the final death blow to my reputation which now is imminent, without first granting me the opportunity to prove my allegations in a U. S. District Court wherein I will be assured of fair and impartial consideration. I ask that I be allowed the chance to present to the Court the myriad issues of fact and law which form the overall pattern of my side of the story—the very pattern which the CEA successfully prevented me from surfacing in my defense these past two years.

Though it may be said that the judicial appellate procedure will eventually—perhaps in two or three years or more —prove my innocence, and that the verdict of ''guilty'' will be reversed, to what avail such vindication? It would serve no purpose, other than that of a splendid obituary of my career, for I will have passed from the commodity and financial scene, owing to the work of a group of men within the CEA who knew how to effectively channel the power of a government agency toward an evil end.

I again earnestly appeal to the Court not to permit the judicial officer to inflict the death blow upon my reputation.

By destroying my reputation in a single blow—a blow that may already be waiting, in the form of a photo-copy of the referee's photo-copy of the prosecuting attorney's brief—the judicial officer will also succeed in destroying my entire career, thus inflicting irreparable harm and damage upon a man who was deprived of his right to defend himself against such a devastating blow, and of the right to prove, before the blow fell, that the structure and fabric of CEA Docket No. 167 was specifically designed by the CEA to accomplish an evil predetermined objective.

I ask the Court, therefore, to grant me the right and the opportunity to present my side of the story—a basic right

that I was denied by the CEA—before my career is completely shattered and destroyed by the inevitable "finding" by the judicial officer that Economou is "guilty as charged."

If I appear to the Court to be pleading in a most urgent and vigorous manner, it is because I am intuitively impelled to make sure that my pleas will be heard in the face of the irreparable harm and damage which impends. For two years now, my pleas and my protests with respect to my basic rights as a citizen have fallen on deaf ears or have been denied by the CEA. For two years now, I have been denied or deprived of my basic rights—of due process, of freedom as to status as a registrant with the CEA, of equal opportunity to tell my side of the story to interested persons, of the right to a fair hearing, of the right to adequate oral argument, of the right, in fact, to be allowed to tell my side of the story without being bludgeoned by judicial machinations, such as the referee submitting a photo-copy of the prosecution's brief as his "report" to the judicial officer.

For two years now, in the face of heavy damage wreaked upon me and my organizations by the programmed acts of the CEA, I have managed to hold my organizations together and have been able also to nurture The American Board of Trade into viability. Through almost super-human work schedules, including many weeks in which a 14 to 18 hour work day was part of our regular life, Mrs. Economou and I were able to somehow hold our activity pattern steady, even though practically crippled in a number of basic areas. Throughout the two years, it was the stigma, the cloud, of the CEA complaint and amended complaint and the related malicious acts of the CEA, that caused the severe damage and posed such administrative and developmental problems for us. It was the power of the complaint procedure at work which crippled us, but did not quite succeed in destroying us.

Now, however, the CEA is ready to let go with its truly devastating weapon—the "finding" by the judicial officer that Economou is "guilty as charged." This is the occasion, the juncture, that the CEA has been working toward. The time has come to inflict the coup de grace to Arthur Economou. Forevermore, he will be silenced, and his career will have come to an end, never again to threaten the grooves of tradition that so comfortably fit the outlook of the CEA

hierarchy but which are so detrimental to our nation's investors and trade groups.

I again ask the Court to protect me, by granting the relief sought herein, from the irreparable harm and damage that now impends.

I ask the Court to grant me the right and the opportunity to prove that CEA Docket No. 167 represents a proceeding wherein a group of men have used the awesome power of the U. S. Government to inflict damage upon, with the purpose of destroying, a citizen and his organizations in the commodity and financial fields, to their own private ends.

In addition to destroying my reputation and my career, the adverse finding and verdict of the judicial officer would also bring about my complete financial ruin. The black cloud of a finding and decision of guilt would have immediate adverse repercussions throughout all eight organizations which I created and head.

Avenues for the financing of these eight organizations, through borrowings or equity stock issues, and developmental measures, through sales efforts and promotions, would be severely restricted, and in some instances, cut off completely, thus endangering the financial interests and safety of hundreds of customers, investors and participants in the activities of these eight organizations.

Under such circumstances, it would be necessary for me to remove the stigma of my pervasive "guilt," in order not to endanger the financial interests of hundreds of innocent persons, by eliminating myself from these eight organizations. To accomplish that, I would be forced to completely liquidate my interests under the most adverse of circumstances, under great pressure, and at extreme monetary sacrifice, resulting in my financial ruin.

* * *

"T"

Effects of Injunctive Relief Totally Constructive

The injunctive relief sought herein will produce only constructive effects and will not adversely affect or harm any party.

The interests of third parties will not be adversely af-

fected by the granting of a preliminary injunction. In granting our request for a 60-day moratorium in CEA Docket No. 167 on November 30, 1971, the judicial officer noted that the CEA prosecuting attorney did not object to our request "since it does not appear that further prolongation of this proceeding will adversely affect third parties."

The interests of the CEA, in the performance of its functions as set forth in the Commodity Exchange Act, will not be adversely affected by the injunctive relief sought herein. None of our activities is subject to CEA rules or regulations.

On the other hand, the relief sought herein will serve to avert the immediate and irreparable injury and damage that will be inflicted upon me and my interests in the eight organizations which I founded and head, if the CEA is allowed to take any further steps in CEA Docket No. 167. The relief sought herein will also serve to preserve the status quo of the CEA/Economou situation pending a more complete resolution of the matters herein.

• • •

"U"

General

1) Plaintiff has tried to get the CEA to withdraw their proceedings under CEA Docket No. 167 by repeatedly pleading with them, but to no avail.

2) Plaintiff has not made prior application for the relief sought herein to this or any other Court.

3) The application for a preliminary injunction is brought on by an order to show cause rather than a motion on notice because the defendants have notified plaintiff that an oral argument before the judicial officer in the CEA Docket No. 167 proceeding and the issuance of the judicial officer's findings and decision may be had at any time after February 1, 1972, and the holding of such oral argument and the issuance of such findings and decision would immediately and irreparably injure the plaintiff.

ARTHUR N. ECONOMOU

Sworn to before me, this
3rd day of February, 1972

JOSEPH GALLAY
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTHUR N. ECONOMOU, *Plaintiff*, —v— UNITED STATES DEPARTMENT OF AGRICULTURE, *et al.*, *Defendants.*	AFFIDAVIT 72 Civ. 478 PRO SE

STATE OF NEW YORK COUNTY OF NEW YORK SOUTHERN DISTRICT OF NEW YORK	ss.:

T. REED McMINN, being duly sworn, deposes and says:

I am the Regional Administrator in the New York Regional Office of the Commodity Exchange Authority. I submit this affidavit in opposition to plaintiff's motion for a preliminary injunction.

To my personal knowledge of the matters involved in the disciplinary proceeding CEA Docket No. 167, the Hearing Examiner, Jack W. Bain, and the Judicial Officer, who will hear the appeal of the Hearing Examiner's report, did not participate in any manner in the investigatory or prosecutory functions handled by the staff of the Commodity Exchange Authority. Any implication to the contrary appearing in plaintiff's lengthy affidavit sworn to February 3, 1972, is hereby denied.

T. REED McMINN

Sworn to before me this 14th day of February, 1972.

WALTER G. BRANNON
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTHUR N. ECONOMOU,
Plaintiff,

—v—

UNITED STATES DEPARTMENT OF AGRICULTURE; EARL L. BUTZ, SECRETARY OF AGRICULTURE; RICHARD T. LYNG, ASSISTANT SECRETARY OF AGRICULTURE; COMMODITY EXCHANGE AUTHORITY; ALEX C. CALDWELL, ACT ADMINISTRATOR, COMMODITY EXCHANGE AUTHORITY; CHARLES E. ROBINSON, DIRECTOR, COMPLIANCE DIVISION, COMMODITY EXCHANGE AUTHORITY; RICHARD E. KIRCHHOFF, DEPUTY DIRECTOR, REGISTRATION AND AUDIT DIVISION, COMMODITY EXCHANGE AUTHORITY; JACK W. BAIN, CHIEF HEARING EXAMINER, UNITED STATES DEPARTMENT OF AGRICULTURE; RICHARD W. DAVIS, JR., COUNSEL, UNITED STATES DEPARTMENT OF AGRICULTURE; T. REED MCMINN, REGIONAL ADMINISTRATOR, NEW YORK REGIONAL OFFICE, COMMODITY EXCHANGE AUTHORITY; CLEMENT GROSS, AUDITOR, COMMODITY EXCHANGE AUTHORITY; MURRAY A. WOLKIS, AUDITOR, COMMODITY EXCHANGE AUTHORITY; EDWARD F. FITZPATRICK, AUDITOR, COMMODITY EXCHANGE AUTHORITY
Defendants.

AFFIDAVIT

Pro-SE
72 Civ. 478

RICHARD W. DAVIS, JR., being duly sworn, deposes and says:

1. I am an attorney in the Office of General Counsel, United States Department of Agriculture and a defendant herein. I represent the Secretary of Agriculture in CEA Docket No. 167, the administrative action sought to be enjoined herein, and am familiar with all aspects of the proceedings had in that matter. I have studied the complaint and affidavit of the plaintiff in this action and am familiar with the allegations of fact, conclusions and demands set forth in those documents.

2. This affidavit is made on the basis of personal knowledge as to my own actions, as to the actions of Jack W. Bain, Chief Hearing Examiner, in the conduct of the oral hearing in CEA Docket No. 167, and as to the actions of Alex C. Caldwell, Charles E. Robinson, Richard E. Kirchhoff, T. Reed McMinn, Clement Gross, Murray A. Wolkis, and Edward F. Fitzpatrick in the preparation for and conduct of the administrative proceeding in CEA Docket No. 167. The statements in this affidavit regarding matters other than those described above are made on the basis of daily involvement in the legal aspects of the operations of the Commodity Exchange Authority for more than two years, familiarity with the provisions of the Commodity Exchange Act (7 U.S.C. Chapter 1), the rules, regulations and orders of the Commodity Exchange Commission, and the Secretary of Agriculture thereunder and the regulations of the Commodity Exchange Authority, under the Freedom of Information Act (17 CFR Chapter I), and on information and belief. The sources of my information and the grounds for my belief in the truth of the statements so based are documents and communications received by me in my official capacity.

3. An amendment to the Commodity Exchange Act which became effective on June 18, 1968 (Pub. L. 90-258, 82 Stat. 28, 7 U.S.C. 6f(2)) authorized the Secretary of Agriculture to prescribe minimum financial requirements to be met by all persons registered as, or seeking registration as, futures commission merchants under the Act. The Secretary published such requirements on January 16, 1969 (34 F.R. 599). The detailed requirements are in 17 CFR 1.17; the related reporting requirements are in 17 CFR 1.10. The Commodity Exchange Authority, on March 19, 1969, sent letters to all registered futures commission merchants which were not subject to the financial requirements

of the Chicago Board of Trade or the Chicago Mercantile Exchange, requesting that they file an initial financial statement as of March 31, 1969. Such a letter was sent to Arthur N. Economou and Co., Inc., a futures commission merchant operated and controlled by plaintiff herein. After receipt and review of the statement of plaintiff's firm, and because the validity of some claimed current assets was questioned, the Director of the Registration and Audit Division of the Commodity Exchange Authority, on or about April 21, 1969, directed the regional office in New York to institute an audit to determine the accuracy of the financial statement. Such audits are conducted on a routine basis of all firms which are not subject to the financial requirements of the Chicago Board of Trade and the Chicago Mercantile Exchange. The Secretary has determined that the financial requirements of those exchanges are adequate for the purposes of the Commodity Exchange Act. This audit was conducted, primarily by Edward F. Fitzpatrick, an auditor in the New York office and a defendant herein. As a result of the audit, it was determined that plaintiff's firm failed by nearly $6,000 to meet the minimum financial requirements. Subsequently, on the basis of other financial statements from the firm, it was determined that there were continuing deficiencies. On February 19, 1970, a complaint was issued. Ten other complaints, alleging failure to meet minimum financial requirements have been issued between May 29, 1969, and September 28, 1971. Oral hearing was set for March 31, 1970. After two extensions of time requested by the respondent, respondents answer was filed on April 23, 1970. Because nearly a year had elapsed since the audit, the Office of General Counsel suggested that a further examination be made to determine respondent's current financial condition. This examination was made by Clement Gross, an auditor in the New York office and a defendant herein. It was determined that plaintiff's firm failed by nearly $25,000 to meet the minimum financial requirements as of March 31, 1970. Consequently, an amended complaint was issued on June 22, 1970, updating the allegations. A hearing was held in New York City on August 5, 6, 7, and 10, 1970, before Jack W. Bain, Chief Hearing Examiner, Department of Agriculture and a defendant herein. I appeared as counsel for the complainant. Edward F. Fitzpatrick, T. Reed McMinn, Richard E. Kirchhoff and Clement Gross, all employees of the Commodity Exchange Authority and defendants herein, presented evidence for the complainant. Suggested findings of fact, conclusions of law and order and briefs in support thereof were submitted by both parties with the final submission, by respondent, being filed on March 8, 1971. The hearing examiner filed his recommended decision on August 17, 1971. Respondents filed exceptions to the recommended decision on November 5, 1971, and requested oral argument before the Secretary. Subsequently, respondents requested a 60-day moratorium in the proceedings which was granted by the Judicial Officer on November 30, 1971. That moratorium expired on February 1, 1972. The matter is now pending before the Judicial Officer. A date for oral argument has not been set.

4. Earl L. Butz is the Secretary of Agriculture. He has not been directly involved in any of the actions alleged in the complaint herein.

5. Richard E. Lyng is the Assistant Secretary of Agriculture for Marketing and Consumer Services. His responsibilities include providing general direction for the operations of the Commodity Exchange Authority. His actions in issuing the complaint and the amended complaint in CEA Docket No. 167 and in his conversation and correspondence with plaintiff were entirely within the course of his official duties.

6. Alex C. Caldwell is the Administrator of the Commodity Exchange Authority, United States Department of Agriculture. His responsibilities include the formulation, direction, and supervision of the execution of the policies governing the activities of the Commodity Exchange Authority, and administration and enforcement of the Commodity Exchange Act, the orders of the Commodity Exchange Commission, and the orders and regulations of the Secretary of Agriculture promulgated under the Commodity Exchange Act. He has final authority to issue calls and requests for information in connection with the administration of the Commodity Exchange Act. His actions in causing an investigation to be made of the financial condition of Arthur N. Economou and Co., Inc., a respondent in CEA Docket No. 167, in causing the initiation of the administrative action in CEA Docket No. 167, in his conferences and correspondence with plaintiff regarding that action and

regarding the enterprises of plaintiff, in releasing to the press an announcement of the issuance of the complaints in that proceeding, and in causing appropriate employees of the Commodity Exchange Authority to collaborate with me in the preparation and presentation of the government case in CEA Docket No. 167 were entirely within the course of his official duties.

7. Charles E. Robinson is the Director of the Compliance Division of the Commodity Exchange Authority. His responsibilities include providing technical leadership, guidance and review to the national program of compliance investigations of alleged or apparent violations of the Act and regulations and recommends appropriate action when investigations disclose violations. He provides technical assistance to the Office of General Counsel in the preparation of administrative complaints and in review and analysis of evidence for presentation at administrative hearings. He reviews rules and proposed rules of applicants for designation as contract market to determine whether they meet the requirements of the Act and regulations. Based upon such review, he recommends approval or disapproval of the application. His actions in relation to the initiation of the administrative action in CEA Docket No. 167, in his conversations and correspondence with plaintiff regarding that action and regarding the enterprises of plaintiff, in collaborating with me in the preparation of the government case in CEA Docket No. 167 and in furnishing information about plaintiff requested by representatives of the Securities and Exchange Commission were entirely within the course of his official duties.

8. Richard E. Kirchhoff is the Deputy Director of the Registration and Audit Division of the Commodity Exchange Authority. The responsibilities of that division include providing technical leadership, guidance and review to the national program of minimum financial requirements for futures commission merchants and to the national program of audits of the books and records of futures commission merchants to assure proper segregation of customers' funds and to determine compliance with minimum financial standards. It analyzes financial reports of futures commission merchants, who are not members of exchanges with approved financial requirements programs, to determine whether they meet minimum financial standards. Mr.

Kirchhoff's actions in relation to the initiation of the administrative action in CEA Docket No. 167, in reviewing the financial statements submitted by Arthur N. Economou and Co., Inc., in reviewing the reports of audits of the books and records of that firm, in collaborating with me in the preparation and presentation of the government case in CEA Docket No. 167 and in presenting evidence in the oral hearing in that proceeding were entirely within the course of his official duties.

9. Jack W. Bain is the Chief Hearing Examiner of the United States Department of Agriculture. His function, insofar as the proceeding in CEA Docket No. 167 is concerned, was to act as referee. His responsibilities as referee were to rule upon motions, requests, and objections, set the time and place of hearing, administer oaths to witnesses, admit or exclude evidence, receive evidence, do all acts and take all measures necessary for the maintenance of order and efficient conduct of the proceeding, receive proposed findings of fact, conclusions and orders from the parties and prepare and file his recommended decision. His actions in conducting the proceeding and in preparing and filing his recommended decision were entirely within the course of his official duties.

10. I am an attorney in the Office of General Counsel, United States Department of Agriculture. My responsibilities in connection with disciplinary proceedings such as that in CEA Docket No. 167 are to review investigation reports, prepare complaints and other pleadings instituting disciplinary proceedings, prepare exhibits and interview witnesses in the preparation for trial of such matters, examine and cross-examine witnesses, argue motions and objections in the course of such proceedings, prepare briefs in support of the government case, and prepare and participate in oral argument of such matters before the Secretary of Agriculture. My actions in preparing and presenting the government case in CEA Docket No. 167, in collaboration with various officials and employees of the Commodity Exchange Authority, were entirely within the course of my official duties.

11. T. Reed McMinn is the Director of the Eastern Region of the Commodity Exchange Authority. This region includes the state of New York. His responsibilities include

the direction, coordination and conduct of all activities of the Commodity Exchange Authority incident to the administration of the Commodity Exchange Act within the Eastern Region. His actions in causing audits to be made of the books and records of Arthur N. Economou and Co., Inc., in relation to the initiation of the administrative action in CEA Docket No. 167, in his conversations and correspondence with plaintiff, in collaborating with me in the preparation and presentation of the government case in CEA Docket No. 167, and in presenting evidence in the oral hearing in that proceeding were entirely within the course of his official duties.

12. Clement Gross and Edward F. Fitzpatrick are auditors in the Commodity Exchange Authority. Their duties are to conduct audits of the books and records of futures commission merchants registered as such under the Commodity Exchange Act in order to assure proper segregation of customers' funds, to determine compliance with minimum financial requirements and to determine compliance with the recordkeeping requirements of the Commodity Exchange Act and the regulations thereunder. Their actions in auditing the books and records of Arthur N. Economou and Co., Inc., in reporting the results of those audits to their supervisors, in collaborating with me in the preparation and presentation of the government case in CEA Docket No. 167, and in presenting evidence in the oral hearing in that proceeding were entirely within the course of their official duties.

13. Murray A. Wolkis is an employee of the Commodity Exchange Authority assigned to the Eastern Region office. From February 25, 1968, to February 21, 1970, he was Chief of the Registration and Audit Branch with responsibilities, at the regional level, similar to those described in paragraph 8 above. From February 22, 1970, to February 20, 1971, he was Chief of the Compliance Branch with responsibilities, at the regional level, similar to those described in paragraph 7 above. From February 21, 1971, to date he has been a Senior Auditor with responsibilities similar to those described in paragraph 12 above. His actions in participating in audits of the books and records of Arthur N. Economou and Co., Inc. as supervisor and auditor were entirely within the course of his duties as

Chief, Registration and Audit Branch; his actions in collaborating with me in the preparation and presentation of the government case in CEA Docket No. 167 and in his conversations with plaintiff were entirely within the course of his duties as Chief, Registration and Audit Branch and Chief, Compliance Branch.

RICHARD W. DAVIS, JR.
Attorney, Office of General Counsel

Sworn to before me this 11th day of February 1972.

Sig. illegible

Notary Public

UNITED STATES DEPARTMENT OF AGRICULTURE
Commodity Exchange Authority
Washington, D. C. 20250

ISSUANCE OF COMPLAINT—CEA Docket No. 167
(Administrative Hearing under the Commodity Exchange Act)

A complaint and notice of hearing has been signed by the Assistant Secretary of Agriculture, charging violation of the Commodity Exchange Act by:

Arthur N. Economou,
Arthur N. Economou & Co., Inc.
(New York, New York)

The complaint charges that during the period from March 31 through June 30, 1969, while a registered futures commission merchant under the Act, the respondent corporation failed to meet minimum financial requirements prescribed for futures commission merchants.

The issuance of a complaint under the Commodity Exchange Act does not constitute proof of violation of the law. Such violation is established only when the Judicial Officer of the Department has made a determination that the evidence substantiates allegations in the complaint. Complaints are filed in the Office of the Hearing Clerk of the Department of Agriculture and are a matter of public record. Pending disposition by the Judicial Officer, it is the policy of the Commodity Exchange Authority not to comment or elaborate on charges contained in complaints or to discuss evidence on which they are based.

A public hearing on the complaint is scheduled to be held before a referee at 10:00 a.m., local time, March 31, 1970, in New York, New York.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTHUR N. ECONOMOU, *et al.*, *Plaintiffs*, v UNITED STATES DEPARTMENT OF AGRICULTURE, *et al.*, *Defendants.*	Civil Action No. 72 Civ. 478 L.F.M. INTERROGATORIES

TO: PAUL J. CURRAN, ESQ.
United States Attorney
Attorney for Defendants
Attention: MEL P. BARKAN, ESQ.
Assistant United States Attorney
Assistant Chief, Civil Division
United States Court House
Room 320
Foley Square
New York, N.Y. 10007

The Plaintiffs request that the Defendants, United States Department of Agriculture (hereinafter "USDA") and Commodity Exchange Authority (hereinafter "CEA") by an officer or agent thereof and the individual Defendants answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. State the name, address and position in government of each person who was involved in investigating the Plaintiffs, the American Board of Trade (hereinafter "ABT"), Arthur N. Economou & Co., Inc. (hereinafter "ANE Inc.") and Arthur N. Economou (hereinafter "ANE") from January 1, 1969 to March 28, 1974.
2. State the precise legal authority for such investigation in statute, rule, regulation, law or other promulgated legal rule.
3. State whether there were any policies within the Defendant government agencies, USDA and CEA, or in the offices of any of the Defendants, that formed a basis for investigation of Plaintiffs, ABT, ANE Inc. and ANE.
4. If the answer to interrogatory no. 3 above is yes, then in full detail provide said policy terms, date of issu-

ance, basis of its authority, and issuing department or division and/or individual, including the relevant address.

5. State which Defendants (including the names and addresses of each individual in a government agency) were involved in making a decision to investigate the Plaintiffs, ABT, ANE Inc. and ANE.

6. State which Defendants (including the names and addresses of each individual in a government agency) were involved in carrying out the investigation of the Plaintiffs, ABT, ANE Inc. and ANE.

7. State briefly the contents of all reports, meetings, discussions, phone calls, and other material that resulted from any investigation by any of the Defendants of Plaintiffs, ABT, ANE Inc. and ANE, and further state in whose custody, specifying the individual and their address, each such written statement or evidence of oral statement reposes.

8. State the name and address of each person interrogated, questioned or interviewed in any manner pursuant to any investigation of Plaintiffs, ABT, ANE Inc. and ANE, and state briefly the results of such questioning, interrogation, or interview, including describing in outline, the contents of any written or oral evidence of such interview and in whose custody each written or oral evidence reposes, specifying said individual and their address.

9. State the results of said investigation of ABT, ANE Inc. and ANE, including an outline of the contents of any written report resulting from said interview, the precise author of any such report, the date of any such report, and in which individual's custody, specifying his address, such report reposes.

10. What files were maintained by the Defendant agencies or the individual Defendants about the Plaintiffs, ABT, ANE Inc. and ANE; what documents are in said files, and in whose precise custody including the names and address of said individual, do said files now repose.

11. State which of the persons (including the address of said persons) in the Defendant government agencies USDA and CEA were involved in the decision to institute proceedings against Plaintiffs ANE, ANE Inc. on February 19, 1970 and June 22, 1970 and specify which individuals made such decisions and by what precise authority.

12. Specify in brief the role each individual in answer to interrogatory no. 11 played in deciding to institute proceedings against Plaintiffs.

13. Specify the specific legal basis for the institution of said proceedings per interrogatory no. 11 above, including the specific rule, regulation, ordinance, or other promulgated or enacted legal authority or authorities that formed the basis of said proceedings.

14. Specify whether any report about any of the Plaintiffs as a result of any investigation, formed the basis of said decision to institute said proceedings against Plaintiffs ANE and ANE Inc. and if so outline the contents of said reports, the date of said reports, the precise author of said reports including the address of the individual or individuals who prepared said reports and state in whose custody said reports repose.

15. State precisely the individuals in the USDA and CEA or individual Defendants (and their addresses) involved in carrying out the decision to institute proceedings against the Plaintiffs ANE and ANE Inc.

16. Specify briefly the role each individual, in answer to interrogatory no. 15 played in administering the decision to institute said proceedings Plaintiffs ANE and ANE Inc.

17. State the date and contents of the confirmation of Plaintiff ANE Inc.'s registration or renewal of registration form in 1968 and 1969. State specifically the individuals including the address of Defendants USDA and CEA or individual Defendants, concerned with passing said renewal application.

18. State what precise date the Plaintiff ANE Inc. was no longer subject to the jurisdiction of the Defendant USDA or Defendant CEA and provide the basis for such a determination.

19. State which individual employees of the Defendant government agencies USDA and CEA or the individual Defendants (including their addresses) released the press releases to the press about the proceedings against Plaintiffs ANE and ANE Inc.

20. Give the dates and times said press releases were released; the contents of said press releases; the groups and individuals to which said press releases were given both inside and outside the government including the names and addresses of individuals who received said press releases.

21. Aside from press releases, specify which individual Defendants or individuals in the USDA and CEA, (including their current addresses) had contact with the media (including radio, television, newspapers, magazines) about the Plaintiffs and specify the date of said meeting the individuals from the media contacted with in person, by phone or by mail, and the brief contents of said communication and specify in whose possession the evidence of such communications now repose.

22. Give the name and address of the person who authorized the release of said press releases on each occasion or any other release to the media regarding the proceedings against Plaintiffs ANE and ANE Inc.

23. Give the names and addresses of the individuals in the employ of the Defendant government agencies or individual Defendants who authorized the omission of the answer of the Plaintiffs and the omission of other papers in said release or communication.

24. Give the names and addresses of persons who were in the employ of the Defendant government agencies or individual Defendants who drafted the press releases and other release to the media including the individuals who drafted the portion indicating the Plaintiffs ANE and ANE Inc.'s financial resources had deteriorated.

25. Give the names and addresses of the individuals who reclassified assets of the Plaintiff ANE Inc. to indicate that said firm did not meet the financiai requirements of the Defendant CEA and give the precise legal basis for such a reclassification.

26. Describe the contents of the various conversations the Plaintiffs ANE and ANE Inc. had with the employees of the Defendant governmental institutions and the individual Defendants about the reclassification of such assets giving the names and addresses of the individuals involved and the date of said conversations and the name and address of the person who now has the record of said conversations.

27. Describe the basis for the decision to amend the complaint against the Plaintiffs ANE and ANE Inc. on or before June 22, 1970 in the proceedings brought by Defendants against the Plaintiffs.

28. Specify the reports, evidence and individuals (including their addresses) who made the decision to amend said

complaint and specify briefly the role each individual played in amending said complaint.

29. Specify in interrogatories 26 and 27 above, the individuals (including their addresses) and their positions who redrafted said complaint.

30. Specify which individuals in the Defendants USDA and CEA or which individual Defendants had communication with other governmental agencies from January 1, 1969 to March 28, 1974 about or concerning any of the Plaintiffs.

31. Specify in response to interrogatory no. 29 above, the date of such communication, the individuals involved in such communication on the Defendants side and the other agencies side, the purpose of such communication, the contents of such communication (in brief outline form) and the place where the evidence of such communication now reposes.

PLEASE TAKE NOTICE that a copy of said answers must be received by the undersigned within thirty (30) days after the service of these interrogatories.

Dated: March 19, 1975

DAVID C. BUXBAUM
Attorney for Plaintiffs
Suite 510
111 Broadway
New York, N.Y. 10006
(212) 349-5780

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTHUR N. ECONOMOU
Arthur N. Economou & Co., Inc.
The American Board of Trade, Inc.
Plaintiffs,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; EARL L. BUTZ, Secretary of Agriculture; RICHARD T. LYNG, Assistant Secretary of Agriculture, COMMODITY EXCHANGE AUTHORITY; ALEX C. CALDWELL, Act Administrator, Commodity Exchange Authority; CHARLES E. ROBINSON, Director, Compliance Division, Commodity Exchange Authority; RICHARD E. KIRCHHOFF, Deputy Director, Registration and Audit Division, Commodity Exchange Authority; JACK W. BAIN, Chief Hearing Examiner, United States Department of Agriculture; RICHARD W. DAVIS, JR., Counsel, United States Department of Agriculture; T. REED MCMINN, Regional Administrator, New York Regional Office, Commodity Exchange Authority; CLEMENT GROSS, Auditor, Commodity Exchange Authority; MURRAY A. WOLKIS, Auditor, Commodity Exchange Authority; EDWARD F. FITZPATRICK, Auditor, Commodity Exchange Authority, DONALD A. CAMPBELL, Judicial Officer, United States Department of Agriculture.

Defendants.

Civil Action
No. 72 Civ. 478
L.F.M.

VERIFIED
AMENDED
COMPLAINT

1. This proceeding is brought in part pursuant to Section 1331, 2201, 2202 of Title 28 of the United States Code and the relevant provisions of the Federal Tort Claims Act 28 USC 1291 ff; Section 1583 of Title 42 of the United States Code; Section 10 (b) of the Administrative Procedure Act

(5 USC 703); and the First and Fifth Amendments of the Constitution of the United States and such other Constitutional and Federal laws as may be relevant hereto.

2. Plaintiffs, The American Board of Trade, Inc. (hereinafter "ABT") and Arthur N. Economou & Co., Inc. (hereinafter "ANE Inc") are corporations incorporated under the laws of the State of Delaware and having their principal office and place of business at 286 Fifth Avenue, New York, N.Y.

3. Plaintiff Arthur N. Economou (hereinafter "ANE") is an individual resident of New York, with resident address at 115 E. 87th Street, New York, N.Y.

4. Defendants are the United States Government, its agencies, and employees thereof, some of whom are investigative or law enforcement officers thereof, who, acting in their ministerial capacity, did conspire to interfere with and violate, and did interfere with and violate, Plaintiffs' rights and privileges, and did deprive Plaintiffs of their property without due process of law, in conflict with the laws and Constitution of the United States, as more fully appears hereinbelow.

5. Defendants, Department of Agriculture, acting through the Defendant Commodity Exchange Authority and officers thereof, instituted proceedings against Plaintiffs ANE and ANE Inc. on February 19, 1970, and June 22, 1970, alleging that, as of certain dates, in 1969 and 1970 ANE Inc. failed to meet certain requirements applicable to "futures commission merchants" registered under the Commodity Exchange Act. Some time before the issuance of the February 19 complaint, Plaintiffs ANE and ANE Inc. had ceased to engage in the activities regulated by Defendants, and several weeks prior to such complaint Defendants had confirmed that ANE Inc., then a registrant, was in conformity with all legal requirements. Defendants issued the June 22 amended complaint against ANE and ANE Inc. at a time when they were no longer subject to regulation by Defendants in respect to the acts which they complained. Defendants issued each of the complaints without the notice or warning required by law.

6. Prior to the issuance of Defendants' illegal complaints and throughout their improper proceedings against ANE and ANE Inc., Plaintiffs and their affiliates were sharply

critical of the staff and operations of Defendants and carried on a vociferous campaign for the reform of Defendant Commodity Exchange Authority to obtain more effective regulation of commodity trading.

7. Defendants furnished the complaints to interested persons and others without furnishing Plaintiffs' ANE and ANE Inc. answers as well, and the New York office of the Defendant CEA failed to include such answers and other papers in the record in its file made available to the public.

8. Following the issuance of the amended complaint, Defendants issued a deceptive press release that falsely indicated to the public that Plaintiffs' ANE and ANE Inc. financial resources had deteriorated, when Defendants knew that their statement was untrue and so acknowledge previously that said assertion was untrue.

9. On January 8, 1973, Defendant Donald A. Campbell issued a final Decision and Order adopting verbatim the sanctions recommended by Defendant Bain and the complaints in the original action against the Plaintiffs herein. Though Plaintiffs had not for some years either been registered as futures commission merchants or otherwise subject to Defendants' regulatory authority, Defendants suspended ANE Inc.'s "registration", required ANE and ANE Inc. to cease and desist from violating requirements applicable only to registrants and denied them trading privileges on contract market for 90 days.

10. In the petition for review of Defendants' Decision and Order brought by ANE and ANE Inc., *Arthur N. Economou and Arthur N. Economou & Co., Inc. v. U.S. Department of Agriculture,* Dkt. No. 73-1221 (2d Cir. 1974), the Circuit Court of Appeals set aside Defendants' Decision and Order and dismissed their proceedings against ANE and ANE Inc. with prejudice, holding that the prosecution of the complaints was unlawful under federal law.

11. We believe the federal courts decision clearly leads to the conclusion that the actions of Defendants against ANE Inc. and ANE were outside the discretionary functions or duties of Defendants.

12. ANE Inc. and ANE's Motion for Taxation of Costs, pursuant to the Federal Rules of Appellate Procedure, to recover the costs they incurred in connection with their defense of the unlawful complaints, has been denied by the

Court of Appeals for the Second Circuit, so that out-of-pocket costs in the aggregate amount of approximately $30,000 which such Plaintiffs expended in their defense have not been recovered by them.

FOR A FIRST CAUSE OF ACTION

13. By bringing unauthorized proceedings against Plaintiffs ANE and ANE Inc. without notice or warning as required by law, Defendants violated the rights and privileges of the Plaintiffs under law and the United States Constitution, including their rights to due process of law.

14. By bringing unauthorized proceedings against the Plaintiffs ANE and ANE Inc., when they knew said Plaintiffs were leaving their jurisdiction, Defendants, in excess of their lawful authority, violated the rights and privileges of the Plaintiffs under law and the United States Constitution.

15. By bringing unauthorized proceedings against the Plaintiffs ANE and ANE Inc. when Plaintiffs were no longer subject to their jurisdiction, Defendants, in excess of their discretionary powers, violated the rights and privileges of the Plaintiffs under law and the United States Constitution.

16. By these unauthorized actions outside their discretionary functions and duties, Defendants sought to supress legitimate business activities of the Plaintiffs directly or indirectly that Congress did not give them authority to regulate, punish the Plaintiffs and accomplish the ruin of their business reputation, through harassing them, causing them to expend large amounts of time and money and publicizing the illegal complaint and order and issuing press releases that were not accurate.

FOR A SECOND CAUSE OF ACTION

17. The Defendants, in excess of their regulatory authority and their discretionary functions and powers, did issue administrative orders, illegal and punitive in nature, against the Plaintiffs after Plaintiffs ANE and ANE Inc. were no longer subject to their authority, deliberately causing the Plaintiffs substantial personal and economic harm, as aforesaid.

FOR A THIRD CAUSE OF ACTION

18. By the aforesaid unauthorized and illegal activities, which caused Plaintiffs to deplete financial and human resources, the Defendants discouraged and chilled the campaign of criticism Plaintiffs ANE and ANE Inc. directed against them, and thereby deprived the Plaintiffs of their rights to free expression guaranteed by the First Amendment of the United States Constitution.

FOR A FOURTH CAUSE OF ACTION

19. By furnishing their complaints to interested persons without furnishing Plaintiffs' ANE and ANE Inc. answers as well and by failing to include Plaintiffs' ANE and ANE Inc. answers and other papers in the file made available to the public by Defendants, Defendants exceeded their authority in violation of Section 9 (a) of the Administrative Procedure Act, 5 USC 558 (b), and, in violation of Plaintiffs' ANE and ANE Inc. rights to due process of law and right to privacy guaranteed by the United States Constitution, sought to subject Plaintiffs' unregulated business affairs to harm, discredit them and interfere with their nonregulated business operations.

FOR A FIFTH CAUSE OF ACTION

20. By issuing a deceptive press release to the media that falsely indicated the Plaintiffs' ANE and ANE Inc.'s financial resources had deteriorated when Defendants knew or should have known they did not, Defendants violated Plaintiffs' ANE and ANE Inc's right to due process of law, for the news release by ministerial officials damaged Plaintiffs' ANE and ANE Inc's credit standing and put pressure on Plaintiffs' staff to counter the false charges to which the release was devoted, and had a serious affect upon the Plaintiffs' public standing, the willingness of customers to do business with them and the businesses with which they were associated, such as Plaintiff ABT.

FOR A SIXTH CAUSE OF ACTION

21. Those Defendants who were law enforcement and investigative officers, acting in their ministerial capacity did act outside the scope of their authority and abuse legal

process by continuing to prosecute unlawfully brought complaints against Plaintiffs ANE and ANE Inc. and demanding sanctions against them when they were no longer under governmental jurisdiction.

FOR A SEVENTH CAUSE OF ACTION

22. Defendants who were law enforcement and investigative officers, acting in their ministerial capacity did act outside the scope of their authority and maliciously prosecute Plaintiffs ANE and ANE Inc. as aforesaid.

FOR AN EIGHTH CAUSE OF ACTION

23. Defendants, by wrongfully causing the publishing of false information about the Plaintiffs ANE and ANE Inc. and wrongfully making public distorted information about the Plaintiffs, did invade the privacy of the Plaintiffs and caused them injury.

FOR A NINTH CAUSE OF ACTION

24. Defendants did negligently and with intent to harm the Plaintiffs, ANE and ANE Inc. publish information about the Plaintiffs causing the Plaintiffs harm.

FOR A TENTH CAUSE OF ACTION

25. Defendants did in excess of their authority upon the facts stated hereinabove, trespass on Plaintiffs ANE, ANE Inc. and ABT property.

26. By reason of all of Defendants' illegal actions, Plaintiffs ANE, ANE Inc. and ABT and their business incurred heavy financial and emotional burdens and were damaged immeasurably, as were all institutions with which the Plaintiffs had a substantial connection.

WHEREFORE, Plaintiff demands:

A. Judgment against the Defendants for the costs and expenses incurred by Plaintiffs ANE and ANE Inc. in defending themselves against the Defendants' illegal activities in the amount of $30,000; and

B. Compensatory damages for injury to the business of the Plaintiffs in the amount of $5,000,000; and

C. Compensatory damages for the interference on the civil rights of the Plaintiffs in the amount of $4,000,000; and

D. Compensatory damages for the invasion of Plaintiffs privacy in the amount of $4,000,000.

E. Compensatory damages for malicious prosecution of Plaintiffs in the amount of $4,500,000.

F. Compensatory damages for abuse of process against the Plaintiffs in the amount of $6,000,000.

G. Compensatory damages for the trespass of the Defendants in the amount of $500,000.

H. Compensatory damages for taking of the property of Plaintiffs in the amount of $8,000,000.

That this court grant such other and further relief as may be just and proper.

/s/ David C. Buxbaum
DAVID C. BUXBAUM
Attorney for Plaintiffs
Suite 510, 111 Broadway
New York, New York 10006
(212) 349-5780

Dated: New York, New York
March 6, 1975

STATE OF NEW YORK
COUNTY OF NEW YORK } ss:

Arthur N. Economou, being first duly sworn deposes and says:

Deponent is an officer of all the Plaintiff corporations in this action and a Plaintiff in this action; Deponent has read the foregoing Amended Verified Complaint and knows the contents thereof; and the same is true to the Deponent's own knowledge, except as to the matters therein stated to be upon information and belief and as to these matters Deponent believes them to be true.

This verification is made by Deponent because Plaintiffs aside from Deponent are corporations and Deponent is an officer of said corporations.

/s/ Arthur N. Economou
ARTHUR N. ECONOMOU

Sworn to before me this 6th day of March, 1975.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTHUR N. ECONOMOU, *et al.*,
Plaintiffs,
v.
UNITED STATES DEPARTMENT OF AGRICULTURE, *et al.*,
Defendants.

NOTICE OF MOTION TO DISMISS SECOND AMENDED COMPLAINT

72 Civ. 478 (LFM)

SIR:

PLEASE TAKE NOTICE that upon the memorandum of law and the opinion of the judicial officer of the United States Department of Agriculture submitted herewith, and upon all prior proceedings and papers filed herein, the defendants will move pursuant to Rule 12(b) of the Federal Rules of Civil Procedure for an order dismissing the second amended complaint on the ground that as to the individual defendants it is barred by the doctrine of official immunity and as to the government agency defendants it is barred by the doctrine of sovereign immunity, at a motion term to be held before the Honorable Lloyd F. MacMahon, United States District Judge, in the United States Courthouse, Foley Square, New York, New York, on the 4th day of April 1975, or as soon thereafter as counsel may be heard.

You are required to serve your answering papers upon the attorney for the defendants on or before April 2, 1975 at 4:00 P.M.

Dated: New York, New York
March 20, 1975

Yours, etc.,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York,
Attorney for Defendants

By: Mel P. Barkan
MEL P. BARKAN
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Telephone No.: (212) 791-0052

TO: DAVID C. BUXBAUM, ESQ.

Attorney for Plaintiffs
Suite 510
111 Broadway
New York, New York 10006

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-second day of November, one thousand nine hundred and seventy-six.

Present: HON. WALTER R. MANSFIELD,
HON. WILLIAM H. TIMBERS,
HON. THOMAS J. MESKILL, C.J.J.

Circuit Judges.

ARTHUR N. ECONOMOU, ARTHUR N. ECONOMOU & CO., INC. AND THE AMERICAN BOARD OF TRADE, INC.

Plaintiffs Appellants,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; EARL BUTZ, SECRETARY OF AGRICULTURE, ETC., ET AL.

Defendants Appellees.

75-6050

It is hereby ordered that the caption in the within action and in the opinion of this court of April 23, 1976, be and it hereby is amended to include the name of defendant-appellee "Donald A. Campbell, Judicial Official, United States Department of Agriculture."

/s/ Walter R. Mansfield
HON. WALTER R. MANSFIELD, C.J.

/s/ Wm. H. Timbers
HON. WILLIAM H. TIMBERS, C.J.

/s/ Thomas J. Meskill
HON. THOMAS J. MESKILL, C.J.

A true copy,
(Name illegible), *Clerk*.

SUPREME COURT OF THE UNITED STATES

No. 76-709

EARL L. BUTZ, et al., *Petitioners,*

v.

ARTHUR N. ECONOMOU, et al.

ORDER ALLOWING CERTIORARI. Filed February 22, 1977.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

☆ U.S. Government Printing Office: 1977—234-667/5